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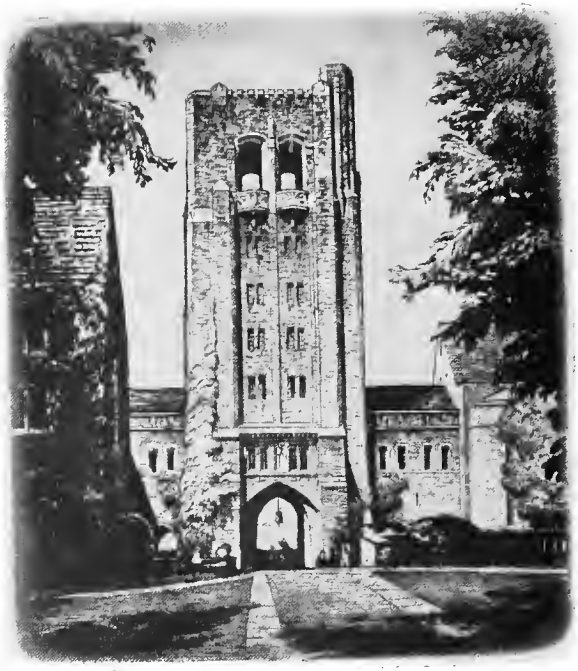

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THE DICTIONARY

OF

LEGAL QUOTATIONS;

OR,

SELECTED DICTA OF ENGLISH CHANCELLORS AND JUDGES FROM THE EARLIEST PERIODS TO THE PRESENT TIME.

EXTRACTED MAINLY FROM REPORTED DECISIONS, AND EMBRACING MANY EPIGRAMS AND QUAINT SAYINGS.

WITH EXPLANATORY NOTES AND REFERENCES

BY

JAMES WILLIAM NORTON-KYSHE

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AUTHOR OF

"CASES HEARD AND DETERMINED IN THE SUPREME COURT OF THE STRAITS SETTLEMENTS, WITH JUDICIAL HISTORY, 1786—1890"; "INDEX TO THE LAWS OF THE STRAITS SETTLEMENTS"; "THE LAW AND PRIVILEGES RELATING TO THE ATTORNEY-GENERAL AND SOLICITOR-GENERAL OF ENGLAND"; "THE HISTORY OF THE LAWS AND COURTS OF HONG KONG, INCLUDING CONSULAR JURISDICTION IN CHINA AND JAPAN"; THE LAW AND PRIVILEGES RELATING TO COLONIAL ATTORNEYS-GENERAL AND TO THE OFFICER CORRESPONDING TO THE ATTORNEY-GENERAL OF ENGLAND IN THE UNITED STATES OF AMERICA"; "THE LAW AND CUSTOMS RELATING TO GLOVES," ETC., ETC.

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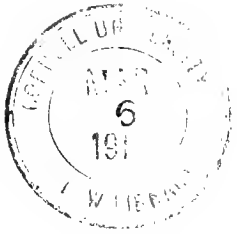

To

THE RIGHT HONOURABLE

LORD ALVERSTONE,

LORD CHIEF JUSTICE OF ENGLAND,

THIS WORK

IS

(BY PERMISSION),

WITH SENTIMENTS OF GREAT RESPECT,

DEDICATED

BY

THE AUTHOR.

PREFACE.

THE *dicta* of our Chancellors and Judges are so numerous and often so good that regret has often been expressed that a record, in accessible form, has not been made of them. Many excellent specimens of judicial rules generally and of forensic wit lie buried, however, among a vast quantity of dull material scattered in the law libraries, and an attempt on a large scale has now been made, for the first time it is believed, to consult the treasures they contain, and as far as is possible, to disinter and codify them. The author's object in producing this work has been to digest this kind of learning, and thus exhibit in a compendious and accessible form those sayings embodied in judicial decisions which cannot be traced without considerable research and difficulty: often difficulty upon any terms, for the books are not always accessible, or if accessible, the quotations themselves are often as not quoted without folio or page or wrongly quoted. In this lies the primary importance of this work, which is therefore a supplementary digest in itself which it is hoped may obtain a wide sphere. The Judges of England have long enjoyed a well-earned reputation for eminence and dialectic feeling, and a study of their thoughts from their opinions and judgments show the numerous sayings, both grave and gay, that have proceeded from the judicial bench. It was a Bishop of London, the late Bishop Creighton, who once said that he found special virtues in old books[1]; and so did the famous Lord Bacon.[2] How far this is correct as regards books of ordinary literature most people will agree, but with regard

[1] Addressing some students of Burlington School on the 7th July, 1900, he advised them "to occupy their leisure in taking up some particular study and pursuing it to the end. The happiest years of his life were the ten during which he kept to a resolution that he would read no books which were written after the year 1600. He would not have them adopt so stringent a course, but if they were to read three books written before 1800 for each one written after that date he was confident they would be better employed."

[2] "For hoping well to deliver myself from mistaking, by the order and perspicuous expressing of that I do propound, I am otherwise zealous and affectionate to recede as little from antiquity, either in terms or opinions, as may stand with truth, and the proficience of knowledge." —*Adv. of Learning.*

to law books this may be true in abstract only, for law grows or changes as age progresses, and taken as a whole, both ancient and modern works are of equal importance. Those who have looked into the pages of the old black-letter editions of the Law Reports in search of a precedent to illustrate some obscure point of law, know how much of our English history lies buried in them. The luminous expressions here collected are the products of a careful perusal of the cases from both ancient and modern reports down to the present time, without reference to digests, headnotes, or indices, and herein lies the author's hope that the work may prove of utility, for the headnote, "the fair epitome of the decision,"[1] offers in this instance absolutely no clue to the origin or source of the quotations. Discrimination has been carefully studied, and although some of the quotations may not be in themselves of much practical value, yet, having come across them in the course of his own reading, it has been deemed expedient by the author to err more on the side of fulness than to have omitted them, besides which, the moral they teach or their quaintness, in many instances suggestive of the age of their utterance, make them all the more worthy of preservation, and thus prove of interest to others besides the legal profession.

The method of classification throughout has necessitated an intermingling of the sayings of modern Judges with those of their early or remote predecessors. A remarkable circumstance to be noticed in many instances is how much some of the *dicta* agree or seem to fall within the spirit at least of previous rulings or the principles of rulings previously propounded, suggestive of the great study and learning in respect of which our Judges have always been so renowned. By means of references below each quotation, those quotations which are of a similar nature in principle will all be found duly connected one with another, thus facilitating the work of reference without having recourse moreover to the full index which also accompanies this digest. A few quotations from Irish and Scotch Judges met with in the course of researches have also been thought worthy of preservation. The vast extent of the subjects embraced, extended far beyond the author's original plan,—for many books on investigation have been productive of nothing for the purposes of this work,—has rendered the task of selection, compression, and of connection one of

[1] *See* JUDICIAL DECISIONS, 25, *infrà*.

considerable labour, nurtured and matured for many years either during spare time or amidst the distractions of official life, for, as Coke has it, "as *unda gignit undam*, so commonly one labour cometh not alone . . . *labor labori laborem addit.*" [1] The quotations are strictly confined to those whose fame lies exclusively in the domain of jurisprudence and the actual practice of the law. Reference to Judge, case, page of the report from which the *dictum* or quotation has been extracted, and the year wherein the case was decided, are all given, and a glance at the names will prove, in a way that is at once convincing and gratifying, how largely the members of the Judicial Bench have contributed to the simplification of our laws as well as to the authorship of famous phrases which have become familiar in our mouths as household words wherever English is spoken or English laws are known and prevail.

J. W. NORTON-KYSHE.

LINCOLN'S INN,
October, 1904.

[1] 2 *Rep.* IV., V.

INTRODUCTION.

THE Judges are probably the best known of all our public men. A great politician addresses the House of Commons on various occasions in the course of a session, but to the public at large he is but a name representing particular political opinions; a Judge, on the other hand, transacts all his business in public. He is constantly brought into direct personal relations, not only with the members of a large and active profession, but with men in all ranks of life, and on every sort of subject. He is, moreover, totally independent of those with whom he has to deal. His position is as secure as law and public feeling can make it. From the excellence of our Constitution, the dignity of our laws, the abilities of those by whom they are administered, and the learning and authority of our reporters through a long series of ages, no anxiety is felt in submitting to public examination the collection of *dicta* contained in this work. For this purpose it has been found necessary to creep centuries backward through the English reports. The strongest impression that they leave in one's mind is the simplicity and unaffectedness of the Judges who, while displaying sometimes a keen sense of humour far reaching in its effects, have not allowed it to interfere in the least with the dignified and most powerful expression they have so often given to the public mind. There are, however, very few anecdotes to be gleaned from their opinions and judgments for the first three or four hundred years after the Conquest. The Judges in those days, apart from frequently taking God's name in vain, and talking of their conscience,[1] occasionally swore when on the bench; at least, we may so conjecture from the language used by John de Mowbray in 44 Edw. III., as reported in the Year-book, who called out to the Bishop of Chester, a defendant in an action tried before him, "*Allez au grand diable!*" But so late as in 1899, we find a learned Judge using an expression often hurtful to ears polite when, in alluding to a case, he stated that the noble Lords, though not overruling it, "damn the case with faint praise, decline in terms to apply it . . . and refuse to extend its operation one iota."[2] John de Cavendish, who was one of the Judges in the latter part of the

[1] *See* BLASPHEMY, *infrà*.

[2] *Per Grantham*, J., Burrows *v.* Rhodes (1899), L. R. 1 Q. B. D. 825. *See also infrà*, COURTS, 3, *n.*

reign of Edward III., seems to have had a spice of dry humour in him. A case occurred before him in which a question arose as to a lady's age, and her counsel urged the Court to call her before them and decide for themselves whether she was within age or not. But women are the same in all time, and the Judge showed that he knew them when he observed: "*Il n'ad nul home en Angleterre que puy adjudge a droit deins age ou de plein age; car ascun femes que sont de age de XXX. ans voilent apperer d'age de XVIII. ans.*" It is singular how illustrations for the decision of one case, often, in the early days, given with a seriousness that can hardly be mistaken, find repetition afterwards on the judicial bench sometimes jocularly or in a light totally different from that which formed the original utterance. Thus, in reference to a woman's age, we again find some centuries after, another learned Judge, who probably had the foregoing mentioned case before his eyes, thus allude to the subject when deciding an action upon a wager and in illustration of it. Said Mr. Justice Grose in 1790:—

"I am of opinion that a bet on a lady's age, or whether she has a mole on her face, is void. No third person has a right to make it a subject of discussion in a Court of justice, whether she passes herself in the world as being more in the bloom of youth than she really is, or whether, what is apparent in her face to every one who sees her is a mole or a wart: and yet these are circumstances which cannot in a Court of law be stated as an injury; for if a man say that a young woman who passes for twenty-three years of age is thirty-three, or that she has a wart in her face (which is considered as a nasty thing), no action will lie for it."[1]

Turning now to criminal cases, we find that in the interval between the abolition of the Star Chamber and the revolution of 1688, the character of English Judges was degraded to a pitch to which it never sank before or since; and the infamy of Scroggs and Jefferies,[2] whose unbridled fury in reviling witnesses[3] and prisoners was, perhaps, the greatest scandal of those violent times, may very properly have been an inducement to later Judges to consult the dignity of their office by abstaining as far as possible from all interference with the course of the proceedings which could look like partisanship. The most conspicuous part of the criminal law in

[1] *Per Grose*, J., Good *against* Elliott (1790), 3 T. R. 699.

[2] *Lord Campbell* ("Lives of the Chancellors," III., 495) remarks:—"The name is spelt no fewer than eight different ways — 'Jeffries,' 'Jefferies,' 'Jefferys,' 'Jeffereys,' 'Jeffereyes,' 'Jeffrys,' 'Jeffryes,' and 'Jeffreys,' and he himself spelt it differently at different times of his life; but the last spelling is that which is found in his patent of peerage, and which he always used afterwards."

[3] "Ask him what questions you will," said *Jefferies*, L.C.J., in Lady Ivy's Trial (1684), "but if he should swear as long as Sir John Falstaff fought, I would never believe a word he says." (10 How. St. Tr. 570.

those times was the law of treason, and the manner in which political offences had been prosecuted under the Stuarts gave a ghastly reality to a rule which has at present a merely formal and technical application to criminal procedure. The character of an English lawyer has been properly defined by Lord Holt as a minister of right and justice; who by the very maxims of his profession is to be above mercenary and sordid interests; and who is admitted to the fullest and most distinct view of our laws, the accumulated wisdom of above a thousand years, and of the wonderful and divine fabric of this our Constitution.

"The impromptu reply," said Molière, "is precisely the touchstone of the man of wit." Our modern legislators are not, as a body, particularly blessed in the power of repartee. The gift of momentarily turning the tables as an aggravating interrupter is possessed only by a few, and the younger students might imitate with pleasure and advantage the sound principles evinced and uttered from the judicial bench, often on the spur of the moment when traversing the tangled skeins of our law, for the law is injured if as a science it be thought so dry and jejune a study as some have conceived it to be.[1] As an example of immediate conception and deep erudition may be mentioned a case full of instruction that came before a former Master of the Rolls, wherein he "likened the plaintiff's case to a colander, because it was so full of holes."[2] Similarly will a case of "entanglement" be found so recently as in 1899, when deciding upon the construction of a notice to quit given by a landlord to a tenant, a learned Judge observed: "It is said that the principles laid down in Doe *v.* Culliford (4 D. & R. 248), and acted upon in Doe *v.* Smith (5 A. & E. 350), have been overruled by Doe *v.* Morphett (7 Q. B. 577). In my opinion those two earlier cases were right, and entitle us to uphold this notice. As I have already pointed out, Doe *v.* Culliford was cited to the Court in Doe *v.* Smith, and the Court in giving their decision expressed no dissent from it. It was not till nine years later that, in Doe *v.* Morphett, a Court consisting of Denman, C.J., Patteson, Williams, and Coleridge, JJ., said that they could not agree with Bayley, J., in Doe *v.* Culliford, and that they thought that case was bad law. I do not agree in that view, and I think we have ample authority for holding that this notice was good, or, to use the classic expression of Denman, C.J., in Doe *v.* Smith, that it was 'well enough.'"[3]

The principles enunciated by many of our eminent Judges, past and present, will be found, on the other hand, most carefully set out. There

[1] *See* LAW, 1, *n.*, *infrà*.

[2] *Per Jessel*, M.R., *Ex parte* Hall, *In re* Cooper (1882), L. R. 19 C. D. 584.

[3] *Per Darling*, J., in Wride *v.* Dyer (1899), L. R. 1 Q. B. D. [1900], p. 27.

is no intention, however, except perhaps in the case of Lord Mansfield, for reasons presently shown, of making any invidious mention or comparisons: on that point the reader may judge for himself, as the slightest acquaintance with the history of our law and the bead-roll it contains will show the eminence of the men from whose decisions the quotations here given are taken. With regard to Lord Mansfield, "whose conspicuous and exalted talents conferred dignity upon the profession, whose enlightened and regular administration of justice made its duties less difficult and laborious, and whose manners rendered them pleasant and respectable,"[1] numerous quotations have been selected from his judgments for the benefit of those in whom he took especial interest, namely, the students, for "very great deference is always due to whatever fell from so able a Judge."[2] As has been truly remarked of him, he was the most accomplished, scholarly and literary figure which the profession of the law has produced. "When he became Chief Justice," says Lord Campbell, "he was in the constant habit of explaining the intricacies of the case tried before him, and giving the reason of his judgments, not only to satisfy the parties, but, as he expressed it, 'for the sake of the students.'"[3] The researches of the author will enable the student to gather for himself under their proper headings all that has fallen from that great Judge on the subject. It is certain that no books include so much brilliant talent and genius of the first order as is to be found in the Law Reports. In them, in addition to legal *dicta*, are also to be found a number of miscellaneous and excellent material which are now quoted principally on account of the interest they afford. To review or refer in this introduction to any of the quotations would, it will readily be conceded, prove a delicate and difficult task, besides adding considerably to the already sufficiently onerous labours of the author.

Between the growing mountains of publications with hundreds of individual explorers burrowing at their own mandate for historical or legal evidence, the student or reader can complain only of an embarrassment of riches. Whatever in this work may tend to communicate any useful precedents to the furtherance of justice, the discouragement of iniquity, the honour of the laws, and consequently of the profession and the public at large, the author shall be happy to have imparted.

[1] *See Ann. Reg.* for 1788, p. 241; *Hale's* "Common Law," Vol. I. (5th ed.) p. xl.

[2] *See* generally *per Lawrence*, J., in King *v.* The College of Physicians (1797), 7 T. R. 295, and *per Lord Kenyon*, C.J., in Craufurd *v.* Hunter (1798), 8 T. R. 22.

[3] *See* LAW REPORTS, 3, *n.*, *infrà*.

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CTIONARY OF LEGAL QUOTATIONS

OR

SELECTED DICTA

OF

ENGLISH CHANCELLORS AND JUDGES.

bduction.

Men will not commonly steal women that are nothing worth.[1]—*Hobart*, C.J., Bruton *v.* Morris (1614), Hob. Rep. 182.

dministration of Justice.

1. The way to do complete justice indeed, is to let in the one side, without prejudicing the other.[2]—*Lord Mansfield*, Rex *v.* Phillips (1758), 1 Burr. Part IV. 304.

   See also 10, 19, *below;* CRIMINAL JUSTICE, 1, 7; EVIDENCE, 21; JURY, 8; RELIEF, 3.

2. It is fit that justice should be administered with great caution.—*Abbott*, C. J., Rex *v.* Bowditch (1818), 2 Chit. Rep. 281.

   See also JUDGES, 16; PLEADINGS, 3; PRECEDENTS, 20; STATUTES, 10.

3. Justice can be peaceably and effectually administered there only where there is recognised authority and adequate power.—*Lord Langdale*, M.R., Duke of Brunswick *v.* King of Hanover (1844), 6 Beav. 49.

   See also COURTS, 10, 14; JUDICIAL DECISIONS, 26; LAW, 59.

4. The law hath respect not only to Courts of records and judicial proceedings there, but even to all other proceedings, where the person that gives his judgment or sentence hath judicial authority.—*Holt*, C.J., Philips *v.* Bury (1788), 1 T.R. 357.

   See also COURTS, 10, 14; LAW, 59.

[1] This is forcibly illustrated in R. *v.* Wendsen (1702), where in a prosecution or felony on stat. 3 Hen. VII. c. 2, for he forcible abduction and marriage of n heiress, the offence was held complete, hough, after the forcible taking, the roman consented to the marriage.—14 *Iow. St. Tr.* 595. The same point was ecided by Lawrence, J., in a case on the Oxford Circuit in 1804.—*1 ibid.* 596 (note). *See also* heading MOTIVES, 2, *suprà.*

[2] This seems to be the true way to come at justice; and what we therefore ought to do: for the true text is "*boni justicis est, ampliare justitiam,*" not "*jurisdictionem,*" as it has been often cited. That is what I would wish to do, if we can do it.—*Id.* 304.

Administration of Justice—*continued.*

5. In drawing an inference or conclusion from facts proved, regard must always be had to the nature of the particular case, and the facility that appears to be afforded, either of explanation or contradiction. No person is to be required to explain or contradict, until enough has been proved to warrant a reasonable and just conclusion against him, in the absence of explanation or contradiction.—*Abbott*, C.J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 140.

See also 8, *below;* Character, 2; Contempt of Court, 3; Criminal Justice, 2, 16; Evidence, 10, 14; Pleadings, 12; Property, 14; Reputation; Witness, 2, *infrà*.

6. I should be extremely sorry to find that in a fictitious proceeding, instituted for the more easy attaining of justice, different rules were to obtain in the different Courts.—*Lord Kenyon*, C.J., Goodright *v.* Rich (1797), 7 T. R. 334.

See also Courts, 1; Practice, 25, 27, *suprà*.

7. Courts of justice cautiously abstain from deciding more than what the immediate point submitted to their consideration requires.—*Sir John Nicholl*, Goods of King George III., deceased (1822), 1 St. Tr. (N. S.) 1278.

See also 9, 14, *below;* Judges, 70; Motives, 13.

8. Like my brothers who sit with me, I am extremely reluctant to decide anything except what is necessary for the special case, because I believe by long experience that judgments come with far more weight and gravity when they come upon points which the Judges are bound to decide, and I believe that *obiter dicta*, like the proverbial chickens of destiny, come home to roost sooner or later in a very uncomfortable way to the Judges who have uttered them,[1] and are a great source of embarrassment in future cases. Therefore I abstain from putting a construction on more than it is necessary to do for this particular case.—*Bowen*, L.J., Cooke *v.* New River Company (1888), L. R. 38 C. D. 70.

See also 5, *above;* Construction; Judges, 11; Pleadings, 8.

9. This statute is indeed as obscure a one as any in the statute-book: it is difficult to ascertain its true meaning. Therefore I do not chuse to give any direct opinion about its extent; unless it should become absolutely necessary for me to do so.[2]—*Lord Mansfield*, Case of John Wilkes (1770), 19 How. St. Tr. 1091.

See also Practice, 6.

[1] On this point *see post*, heading Dictum; Obiter Dicta.

[2] See also *per Lord Kenyon*, C.J., in Rolleston *v.* Hibbert (1789), 3 T. R. 412.

Administration of Justice—*continued.*

10. It is the great duty of every Court of justice to administer justice as well as they can between the litigating parties; another, and not less material, duty is to satisfy those parties that the whole case has been examined and considered.—*Lord Kenyon*, C.J., Booth *v.* Hodgson (1795), 6 T. R. 408.

See also 1, *above;* 15, 19, *below;* JUDGES, 52.

11. I am not, as I consider, to decide cases in favour of fools or idiots, but in favour of ordinary English people, who understand English when they see it, and are not deceived by any difference in type, but who have before them a very plain statement.—*Jessel*, M.R., Singer Manufacturing Co. *v.* Wilson (1876), L. R. 2 C. D. 447.

See also CASES, 15; JUDGES, 62; LAW, 65; NOTICE TO QUIT; WILL, 8.

12. We do not use to judge of cases by fractions.—*Finch*, L.C.J., Hampden's Case (1637), 3 How. St. Tr. 969.

13. I think it is not best for us to declare our opinions by piece-meals, but upon all the case together, and as you are a stranger to the return, so are we; and there be many precedents and acts of Parliament not printed, which we must see.—*Hyde*, C.J., Proceedings on Habeas Corpus—Sir T. Darnel and others (1627), 3 How. St. Tr. 31.

See below, 14.

14. As a general rule, I beg that it may be understood, that a case is not to be cut into parts, but that when it is known what the question in issue is, it must be met at once.—*Lord Ellenborough*, Rees *v.* Smith and others (1816), 2 Starkie, 32.

See also 7, *above;* EVIDENCE, 24; PLEADINGS, 11.

15. No system of judicature can be suggested in which occasionally failure to insure complete justice may not arise.[1]—*Hawkins*, J., The Queen *v.* Miles (1890), L. R. 24 Q. B. 433.

See also CASES, 21; CHANCERY, 10; CRIMINAL JUSTICE, 29, 36; EVIDENCE, 22; JUDGES, 17; LAW, 55, 62; MISTAKES; PARLIAMENT, 3, *n.*; STATUTES, 2; WILL, 18, *n.*

16. It has been often said that Courts of justice have nothing to do with what are called principles of honour, and there is a well-known case in

[1] Mr. Snell's excellent definition of equity appropriately illustrates this: "Equity in its general sense is that quality in the transactions of mankind which accords with natural justice, or with honesty and right. . . . But in its technical sense, that is to say, as administered by the Courts, equity embraces a jurisdiction much less wide than the principles of natural justice; for there are many matters of natural justice which the Courts have wholly unprovided for, partly from the difficulty of framing rules to meet them and partly from the doubtful policy of attempting to give a legal sanction to duties of so-called imperfect obligation, such as charity, justice and kindness."—*Snell*, Eq. Part 1., Ch. 1, p. 1.

Administration of Justice—*continued.*

the books, with which those who practise in the Courts are very familiar, in which, upon a counsel saying to Lord Thurlow, "Your lordship must think in point of honour" so and so, Lord Thurlow said, "Upon that ground you must apply to the person himself; I do not give any opinion upon that subject."—*Lord Cranworth*, Smith *v.* Kay (1859), 7 H. L. Cas. 773.

17. Upon your honour, sir! pray speak by your honesty.—*Hyde*, C.J., Turner's Case (1664), 6 How. St. Tr. 596.

See LAW, 26.

18. If we were sitting in a court of honour, our decision might be different.[1]—*Fry*, L.J., *In re* Cawley & Co.; *Ex parte* Hallett (1889), 58 L. J. Rep. C. D. 645.

See also CHANCERY, 9; JUDGES, 29; LAW, 40; MORALS, 3; PUBLIC POLICY, 7.

19. Where a real ground is laid, the Court will take care that justice is done to the defendant as well as to the plaintiff.—*Lord Mansfield*, Mostyn *v.* Fabrigas (1775), Cowp. 161.

See 1, 10, *above;* CRIMINAL JUSTICE, 7; EVIDENCE, 21; JURY, 8; PRACTICE, 26.

20. I desire that after I have given the judgment of the Court, that judgment may not be talked about; I have given it upon my oath, and am answerable to my country for it. I have been before reminded that these things are not passing in a corner, but in the open face of the world; I hope I need not be admonished that I am to administer justice; if I have done amiss, let the wrath and indignation of Parliament be brought out against me; let me be impeached; I am ready to meet the storm whenever it comes, having at least one protection; the consciousness that I am right.[2] In protecting the dignity of the Court, I do the best thing I can do for the public: for if my conduct here is extra-judicially arraigned, the administration of justice is arraigned and affronted, and that no man living shall do with impunity.—*Lord Kenyon*, Proceedings against the Dean of St. Asaph (1783), 21 How. St. Tr. 875.

See also CONTEMPT OF COURT, 9; COURTS, 3, 4; JUDGES, 19, 26, 37, 73; JUDICIAL PROCEEDINGS, 11; POLITICS, 4.

21. I will not suffer any impertinent interposition in causes, in those

[1] "We think the *conscience* of the case is entirely on your side."—*Lord Mansfield*, James *v.* Price (1773), Lofft. 221.

[2] See also *per* Best, J.: "Whether I shall persuade others that I have acted right I know not. It is enough for me as an Englishman to be myself satisfied that I have done so."—*Trial of Sir F. Burdett* (1820), 1 St. Tr. (N. S.) 120.

Administration of Justice—*continued.*

who are no parties in the cause.[1]—*Kenyon*, L.C.J., Proceedings against the Dean of St. Asaph (1783), 21 How. St. Tr. 862.

See also CONTEMPT OF COURT, 2; JUDGES, 19, *n.*; TORT, 8.

22. A man *may* judge impartially even in his own cause.—*Lord Mansfield*, Rex *v.* Cowle (1759), 2 Burr. Part IV., p. 863.

23. It is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest.[2]—*Lord Campbell*, Dimes *v.* Proprietors of the Grand Junction Canal and others (1852), 3 H. L. Cas. 993.

24. As to any *inconveniences* that may be suggested from imagination, "the *keeping strictly to the rule of not permitting a man to be judge in his own cause*," is of more consequence than any such supposed inconveniences can weigh against.[3]—*Lee*, C.J., Rex *v.* Inhabitants of Great Chart (1742), Burrow (Settlement Cases), 197.[4]

25. The maxim "that no man shall be a judge in his own cause," is founded on the palpable inconsistency between the situations of party and Judge, which must prevent the decisions of any one uniting both characters from being satisfactory, even though they should be perfectly just.—*Talfourd*, J., Brownlow *v.* Egerton (1854), 23 L. J. Rep. Part 5 (N. S.) Ch., p. 361.

26. Of course the rule is very plain, that no man can be plaintiff or

[1] Interference with the course of justice by a stranger to the suit, a high public injury.—*Skipworth's Case* (1866), L. R. 3 Q. B. 230. *See also infrà*, JUDGES, 81.

[2] *Iniquum est aliquem rei suæ esse judicem. In propriâ causâ nemo judex sit.*—12 *Co.* 13.

Judex non potest esse testis in propriâ causâ.—4 *Inst.* 272.

Judex non potest injuriam sibi datam punire.—12 *Co.* 113.

Nemo debet esse judex in propriâ suâ causa.—12 *Rep.* 113.

"It is against reason," says Littleton (sect. 212), "that if wrong be done any man that he thereof should be his own judge"; and Lord Coke, in commenting on this passage says, "it is a maxim in law, *aliquis non debet esse judex in propriâ causâ.*"

[3] The three other Judges [Chapple, Wright and Denison JJ.] were unanimous, and held it to be a fundamental rule of reason, and of natural justice, "'that *no man* can be judge in his own cause.' Mr. Voke is here stated *to be interested:* he therefore could not be a judge."

[4] "I cannot help transcribing from the *Year-book* of 8 H. 6" (says the Reporter) "a very singular passage. It is in fo. 20 *b.* Serj. *Rolf*, who argued for the Chancellor of *Oxenford*, says: "Jeo vous dirra un fable. En aucuns temps fuit un Pape; et aver' fait un graund offence. Et le Cardinalz viendroient a luy, et disoient a luy—*Peccafti.* Et il dit—*Judica me.* Et ils disoient—*non possumus;* quia Caput es Ecclesiæ: *Judica Te ipsum.* Et l Apostoil dit—*Judico me cremari:* Et fuit combustus. Et en ce'cas, il fuit son Juge demesne: Et apres fuit un Seint." "Et iffint," says the Serjeant, "*n'est pas* inconvenient, que un Home soit son Juge demesne."

Olaus Magnus (de Gentibus Septentrionalibus) tells a like story of a northern king, who was hanged in pursuance of his own sentence: But it don't appear that he was afterwards made a saint."—*Id.* p. 197, n.

Administration of Justice—*continued.*

prosecutor in any action, and at the same time sit in judgment to decide in that particular case, either in his own case, or in any case where he brings forward the accusation or complaint in which the order is made.—*Cotton*, L.J., Leeson *v.* General Council of Medical Education and Registration (1889), L. R. 43 C. D. 379.

27. It is exceedingly desirable that justice should be administered by persons who could not be suspected of any, even indirectly, interested motive.[1]—*Mellor*, J., Reg. *v.* Allan (1864), 4 B. & S. 915; 33 L. J. Mag. Cas. 98.

28. Nothing can be more important than to maintain intact the principle that a man shall not be a judge in his own cause, and to preserve every tribunal which has to adjudicate upon the rights, or status, or property of any of Her Majesty's subjects from any suspicion of partiality.[2]—*Davey*, L.J., Allinson *v.* General Council of Medical Education and Registration (1894), L. R. [1894], 1 Q. B. p. 764.

See also JUDGES, 38, 58, 61.

29. In the administration of justice, whether by a recognised legal Court or by persons who, although not a legal public Court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biassed.—*Lord Esher*, M.R., Allinson *v.* General Council of Medical Education and Registration (1894), L. R. [1894], 1 Q. B. p. 758.

See above, 28, *and references there given.*

[1] The first maxim of a free State is, that the laws be made by one set of men, and administered by another; in other words, that the legislative and judicial characters be kept separate.—*Archdeacon Paley*, "Principles of Moral and Political Philosophy," Bk. 6, c. 8. "The judicial," writes Lord Brougham, "ought to be kept entirely distinct from the legislative and executive power in the State. This separation is necessary both to secure the independence of the judicial functions and to prevent their being influenced by the interests of party or by the voice of the people."—*British Constitution*, 322, 323.

"No one," Napoleon is reported to have said, "can have greater respect for the independence of the legislative power than I: but legislation does not mean finance, criticism of the administration, or ninety-nine out of the hundred things with which in England the Parliament occupies itself. The legislature should *legislate*, *i.e.*, construct grand laws on scientific principles of jurisprudence, but it must respect the independence of the Executive as it desires its own independence to be respected. It must not criticise the Government, and, as its legislative labours are essentially of a scientific kind, there can be no reason why its debates should be reported." *Napoleon to Sieyès*, quoted by Sir J. Seeley in "Introduction to Political Science," 216.

[2] It is of the greatest importance that the administration of justice should not only be free from spot or blame, but that it should be, so far as human infirmity could allow it to become, as free from all suspicion. — *Lord Ellenborough*, C.J., *Bayley*, J., King *v.* Hunt (1820), 2 Chit. Rep. 134. The administration of justice should not only be chaste, but should not even be suspected.—*Blac. Comm.* Bk. 3, Ch. 25, p. 380.

Administration of Justice—*continued.*

30. It is always difficult, as it seems to me, for a man to decide between his duty and his interests; that is acknowledged upon all hands.—*Cave*, J., *In re* Marten (1888), L. R. 21 Q. B. 34.

31. No man should be allowed to have an interest against his duty.—*Lord Ellenborough*, Thompson *v.* Havelock (1808), 1 Camp. 528.

32. I have acted upon this occasion with the firmness which the times in which we live particularly require, but I trust I have not lost sight of that which ought in all times to guide a Judge in this country, where every magistrate is reminded by the oath of his Sovereign, that it is his first duty to administer justice in mercy.[1]—*Best*, J., Trial of Sir F. Burdett (1820), 1 St. Tr. (N. S.) 120.

See also CRIMINAL JUSTICE, 23; LAW, 48; PARDON, 3; PUNISHMENT, 5; TRIAL FOR LIFE, 1.

33. The interest of the public is never better advanced than when we can inculcate by our rules the advantage of acting honestly.—*Lord Kenyon*, C.J., Cuming *v.* Sharland (1801), 1 East, 413.

See also DISCRETION, 9; JUDGES, 38, 76; PRACTICE, 17, 25; REASONABLE, 4.

34. *Quant al Judge & Officer, le general regle prise en nostre Livers, est, lou le Court ad jurisdiction, nul action gist vers le Judge ou Officer :* "No action will lie against a judge of record for any matter done by him in the exercise of his judicial functions."—*Powel*, J., Gwinne *v.* Poole (1692), Lutw. 935, 1560.[2]

See below, 35.

35. This freedom from action and question at the suit of an individual is given by the law to the Judges, not so much for their own sake as for the sake of the public, and for the advancement of justice, that being free from actions they may be free in thought and independent

[1] The Judge dispenses mercy; mercy is the prerogative of the Crown. The Judge pronounces the law's doom; it is the privilege of the Sovereign to modify and mitigate a sentence according to the circumstances of the case. The crime is not always the measure of guilt. A small crime may involve greater criminality than a great crime; a great crime may have less of guilt in it than a small one. The law cannot measure this—at least our law does so but imperfectly; and public opinion still more imperfectly. In France, provision is made for such a frequent state of things, by the power given to the jury of finding a verdict of "guilty with extenuating circumstances." We do it rudely by the jury's recommendation to mercy. But motives are often misrepresented and misunderstood out of Court, where the facts that call for mitigation are not known. The public look broadly at the crime and take no account of the circumstances of the criminal, and they exclaim against lenity, or against severity, ignorant of the causes that in either case determine the actual amount of criminality.

[2] See also Floyd *v.* Barker, 12 Co. 24; Dr. Groenveldt *v.* Dr. Burwell and others, 1 Ld. Raym. 454; Hamond *v.* Howell, 1 Mod. 184; 2 Mod. 218.

Administration of Justice—*continued.*

in judgment, as all who are to administer justice ought to be. And it is not to be supposed beforehand that those who are selected for the administration of justice will make an ill use of the authority vested in them.[1] Even inferior justices, and those not of record, cannot be called in question for an error in judgment, so long as they act within the bounds of their jurisdiction.[2] In the imperfection of human nature[3] it is better, even, that an individual should occasionally suffer a wrong,[4] than that the general course of justice should be impeded and fettered by constant and perpetual restraints and apprehensions on the part of those who are to administer it.[5] Corruption is quite another matter; so, also, are neglect of duty and misconduct in it. For these, I trust, there is and always will be some due course of punishment by public prosecution.[6]—*Lord Tenterden*, C.J., Garnett *v.* Ferrand (1827), 6 B. & C. 624, 625.[7]

See above, 34; COUNSEL, 12, 13, *n.*

Admiralty.

1. A man shall not sue in the Admiralty, only because it is a ship.[8]—*Holt*, C.J., Shermoulin *v.* Sands (1697), 1 Raym. 272.

[1] *See* JUDGES, 20, *n.*; 27; PUBLIC SERVANT, 8.

[2] *See* MAGISTRATES, 4, 5.

[3] *See* MISCELLANEOUS, 53.

[4] *See* TORT, 23.

[5] *See* COMMERCE, 4; DISCRETION, 12; EQUITY, 8; PUBLIC POLICY, 9.

[6] *See* DISCRETION, 9.

[7] See also R. *v.* Mather, 2 Barnard, 249; R. *v.* Jackson, 1 T. R. 653; R. *v.* Borron, 3 B. & Ald. 432; R. *v.* Badger, 7 Jur. (O. S.) 216; and other cases cited in Hawk. P. C. b. 2, c. 8, s. 74. For a conviction made maliciously and without any reasonable or probable cause, in case such conviction shall have been quashed, there is an action upon the case, by stat. 43 Geo. III. c. 141 (see Burley *v.* Bethune, 5 Taunt. 583). The doctrine which holds a Judge exempt from a civil suit or indictment for any act done or omitted to be done by him sitting as Judge, has a deep root in the common law. It is to be found in the earliest judicial records, and it has been steadily maintained by an undisturbed current of decisions in the English Courts, amidst every change of policy and through every revolution of their Government. A short view of their cases will teach us to admire the wisdom of our forefathers and to revere a principle on which rests the independence of the administration of justice.—*Chan. Kent*, Yates *v.* Lausing, 5 Johns. (U. S.) Rep. 291.

[8] This *dictum* relates to Admiralty jurisdiction. It is explained by a remark of Dr. Lushington in the judgment of the Case of *The Volant* (1842), 1 W. Rob. 387: "The jurisdiction of the Court does not depend upon the existence of the ship, but upon the origin of the question to be decided, and the locality." Now under the Judicature Acts certain matters are assigned to the Admiralty Division, so that the question of jurisdiction is set at rest; but before the Judicature Acts there were many decisions on whether actions of certain classes lay within the Admiralty jurisdiction or not. As far back as the reign of Edward III. it exercised jurisdiction: 1, over matter of prize, &c.; 2, over delicts and offences in British ports and over the high seas; 3, over contracts and other matters regulated by the laws of Oleron and other special Ordinances; and 4, over maritime causes in general, but still under the Admiralty Court Act, 1861 (24 Vict. c. 10), it was not properly a Court of record and could not fine, yet

Admiralty—*continued.*

2. I for one will not re-open the floodgates of Admiralty jurisdiction upon the people of this country.—*Lord Esher*, M.R., The Queen *v.* Judge of City of London Court (1891), L. R. 1 Q. B. D. 299.
3. The difficulty of dealing with Admiralty Reports by way of authority is, that there is no necessity in that Court that the Judge should, in the exposition of the grounds of his judgment, discriminate strictly between the proposition of law which is to be satisfied by all the facts of the case, and the rule of interpretation of the direct facts of maritime vicissitudes given in evidence, by which he desires to bind himself and his successors as to the inference of fact he and they ought, as a general rule, to draw from those facts.—*Brett*, L.J., Akerblom *v.* Price (1881), L. R. 7 Q. B. 132.

Admission.

No admission of the party . . . can make that legal which is in its nature illegal.—*Ashhurst*, J., Atherfold *v.* Beard (1788), 1 T. R. 615.

See also CONSENT, *and references therefrom;* PRACTICE, 24.

Affidavit.

1. We cannot try the merits upon affidavit.[1]—*Lord Mansfield*, Rex *v.* Blooer (1760), 2 Burr. Part IV. 1045.

See PRACTICE, 11.

by the custom of the Court, it could amerce the defendant for his default at its discretion. (The Case of the Admiralty (1609) (7 Jac. I.), 6 Rep. Pt. XIII. 53 ; 6 Viner's Abridg. 521). American cases have decided that the jurisdiction is founded for the most part on the subject-matter: Gardner *v.* The New Jersey, 1 Pet. Adm. 241. (The whole subject is now laid down in Parsons on Admiralty Law, V. 11, p. 506.) But in our law the place has also been important, and formerly the local limits of Admiralty jurisdiction were very doubtful. Thus the Courts did not take cognizance of torts in any foreign river, save in Turkish waters (*The Ida* (1860), 1 Lush. 8) ; also Admiralty causes must be causes arising wholly upon the sea and not within the precincts of any country, either by land or water, nor of any wreck of the sea, for that must be cast on land before it becomes a wreck (R. *v.* Forty-nine Casks of Brandy (1836), 3 Hag. Adm. 282). Therefore in short this ruling of Lord Holt means that, to give the Admiralty jurisdiction, there are matters to be considered besides that the subject-matter is a ship or that the cause of action occurred in connection with one.

[1] This means that an affidavit states facts, and if those facts are denied, the deponent, as we know, can be cross-examined on his affidavit. But they (affidavits) are only used, as a rule, in interlocutory applications and in chambers, and when the merits of a matter are contested, the issue is sent into Court where witnesses are examined, and it is tried like an issue in a suit. That in fact, affidavit and counter-affidavits are not sufficiently facile and flexible to enable the Court or Judge satisfactorily to adjudicate on a contested issue. Oral examination and cross-examination in open Court are more desirable. Formerly in Chancery actions, evidence was given by affidavit, before the Judicature Acts had amalgamated the procedure, and at present evidence can only be taken by affidavit by consent. As a proof of the unsatisfactory nature of affidavits to

Affidavit—*continued.*

2. So many affidavits, so studiously and artfully penned, to be safely sworn in one sense and read in another, are an aggravation.—*Lord Mansfield*, Rex *v.* Beardmore (1759), 2 Burr. Part IV. 795.

See also CRIMINAL JUSTICE, 36; EVIDENCE, 2, 3, 22; JURY, 26; PLEADINGS, 11.

3. We cannot suffer a person by his affidavit to arraign the whole justice of the country and its administration.—*Abbott*, C.J., Case of Edmonds and others (1821), 1 St. Tr. (N. S.) 924.

See also BIBLE, 1, *n.*

Aggression.

Every general reprisal is a hostile aggression.—*Heath*, J., Beale *v.* Thompson (1803), 3 Bos. & Pull. 426.

Amendments.

1. Blessed is the mending hand.[1]—*Twisden*, J.
2. Whatever at common law might be amended in civil cases, was at common law amendable in criminal, and so it is at this day.—*Holt*, C.J., *Powell* and *Powis*, JJ., The Queen *v.* Tutchin (1704), 1 Salk. 51 pl. 14.
3. The rule is "that whilst all is in paper, you may amend."—*Lord Mansfield*, Bondfield *v.* Milner, (1760) 2 Burr. Part IV., p. 1099.
4. "Mr. Attorney, I have often heard say, 'Blessed is the mending hand.'"—*Sir George Jefferies*, L.C.J., Trial of Sir S. Barnardiston (1684), 9 How. St. Tr. 1,366, 1,637.
5. Amendments ought not to be made, except in cases where the alteration is of such a nature as that no one can be misled by it.—*Lord Alvanley*, C.J., *Ex parte* Motley *et uxor* (1801), 1 Bos. & Pull. 456.
6. We must judge upon the case as stated. If it is mis-stated, you must apply to amend it.—*Lord Mansfield*, Doe *v.* Lewis (1758), 1 Burr. Part IV., p. 617.
7. I am very free to own that the strong bias of my mind has always leaned to prevent the manifest justice of a cause from being defeated or delayed by formal slips, which arise from the inadvertence of

decide a case upon its merits, it has been ruled that although there has been an agreement to give evidence by affidavit and the affidavits have been read, yet the Court may order the witnesses to be examined orally.—*Lovell* v. *Wallis* (1883), 53 L. J. Ch. 494.

[1] This quotation in regard to amendments is attributed to *Sir Thomas Twisden*, a Judge of the Court of King's Bench, 1660—1682. See 12 How. St. Tr. 258. But Coke attributes it to Sir Edm. Plowden. See concluding portion of Coke's Epilogue in 4 Co. Inst. (at the end

Amendments—*continued.*

gentlemen of the profession; because it is extremely hard on the party to be turned round, and put to expense, from such mistakes of the counsel or attorney he employs. It is hard, also, on the profession.[1]—*Lord Mansfield*, Bristow *v.* Wright (1781), 2 Doug. 666.

8. It is between the stirrup and the ground, Brother; but you may amend by replying.[2]—*Tindal*, C.J., Spincer *v.* Spincer (1841), 5 Jur. (O. S.) 102.

9. The test as to whether the amendment should be allowed is whether or not the defendants can amend without placing the plaintiff in such a position that he cannot be recouped, as it were, by any allowance of costs or otherwise.—*Pollock*, B., Steward v. Metropolitan Tramways Co. (1885), 16 Q. B. D. 180.

10. However negligent or careless may have been the first omission, however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs.—*Brett*, M.R., Clarapede & Co. *v.* Commercial Union Association (1883), 32 W. R. 262.

11. My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting *malâ fide*, or that by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise.—*Bramwell*, L.J., Tildesley *v.* Harper (1878), L. R. 10 C. D. 396.

12. I have said frequently, and I repeat it, that there is no Judge on the bench who is more willing to allow amendments, even at the last moment, than I, provided there is no surprise.—*Kekewich*, J., James *v.* Smith (1890), L. R. 1 C. D. [1891], p. 389.

13. I do not think I ought to allow an amendment for the mere purpose of enabling the defendant to raise a purely technical objection to the plaintiff's title to sue.—*Fry*, J., Collette *v.* Goode (1878), 7 C. D. 847.

14. An amendment ought not to be allowed if it will occasion injustice; but if it can do no injustice, and will only save expense, it ought to be made.—*Lord Esher*, M.R., Roberts *v.* Plant (1895), L. R. 1 Q. B. D. [1895], p. 603.

of the volume), where he says: "And we will conclude with the aphorisme of that great lawyer and sage of the law, Edm. Plowden (which we have heard him often say) *Blessed be the amending hand.*" For a full exposition of the rise and history of amendments, see I Bl. bk. 3, c. 25, p. 407; also *per Lord Mansfield* in Rex. *v.* Wilkes, 4 Burr. Part. IV. 2567.

[1] *Vitium clerici nocere non debet:* A clerical error ought not to hurt.—*Jenk. Cent.* 23.

[2] This was in reply to Serjt. Stephens, who had asked for leave to amend his plea.

"Between the stirrup and the ground
He mercy sought and mercy found."

See ROMANCES.

With regard to the term "Brother" in this quotation, *see post*, JUDGES, 53, *n.*

Amendments—*continued.*

15. I do not mean to say that the Court could not give leave to amend, but I cannot conceive that the Court would listen to an application for leave to amend after the trial. That could not have been intended: it would be opposed to all principles of justice.—*Lindley*, M.R., Lowe *v.* Lowe (1899), L. R. P. D. C. A. [1899], p. 209.

American Decisions.

1. We should treat with great respect the opinion of eminent American lawyers on points which arise before us, but the practice, which seems to be increasing, of quoting American decisions as authorities, in the same way as if they were decisions of our own Courts, is wrong. Among other things it involves an inquiry, which often is not an easy one, whether the law of *America* on the subject in which the point arises is the same as our own.—*Lord Halsbury*, L.C., *In re* Missouri Steamship Company (1889), L. R. 42 C. D. 330.[1]
2. Arguments from the American statute are not of much force, because Englishmen are not bound to know it.—*Pollock*, C.B., Attorney-General *v.* Sillem and others (1864). The Alexandra, 12 W. R. 261.
3. Decisions in the American Courts are entitled to great respect, but are not binding here; and there are many circumstances affecting

[1] "I also have been struck by the waste of time occasioned by the growing practice of citing American authorities.—*Fry*, L.J., *id.*

"I have often protested against the citation of American authorities."—*Cotton*, L.J., *id.*

"I have no power to follow the authorities cited to me from the United States if by so doing I were to contravene the law of England."—*Butt*, J., The Avon and Thomas Joliffe (1890), L. R. 1 Pro. Div., p. 8.

"To us the judgments of Courts in the United States are merely what our decisions have been to them. To us they are merely the opinions of eminent and learned men on a question of law, which is common to them and to us. Eminent Judges have given their opinion one way, and other eminent Judges have given their opinion another way."—*James*, L.J., The Queen v. Castro (1880), L. R. 5 Q. B. D. 503. Also *per Lord Watson*, Castro *v.* The Queen (1881), L. R. 6 App. Cas. 249; 50 L. J. Q. B. 507.

"I need hardly say that I am always anxious to hear if there be any American decisions bearing upon the question before me, not because they are binding authorities upon me, but in order that I may get the very assistance which I have over and over again derived from the decisions of accomplished Judges, who are dealing with what is very much the same law as our own."—*Brett*, L.J., The Queen *v.* Castro (1880), L. R. 5 Q. B. D. 516.

"Although American decisions are not binding on us in this country, I have always found those on insurance law to be based on sound reasoning and to be such as ought to be carefully considered by us and with an earnest desire to endeavour to agree with them."—*Brett*, L.J., Cory *v.* Burr (1882), L. R. 9 Q. B. D. 469.

"Although the decisions of the American Courts are of course not binding on us, yet the sound and enlightened views of American lawyers in the administration and development of the law—a law, except so far as altered by statutory enactment, derived from a common source with our own—entitle their decisions to the utmost respect and confidence on our part."—*Cockburn*, C.J., Scaramanga *v.* Stamp (1880), L. R. 5 Com. Pl. Div. 303.

American Decisions—*continued.*

questions arising between the laws of different States which may or may not be applicable to questions arising here.[1]—*Kekewich*, J., *In re* De Nicols. De Nicols *v.* Curlieb (1898), L. R. 1 C. D. [1898], p. 410.

Americans.

I hope that there is no jealousy, or even ground of jealousy, on the part of the *Americans*, but that they know that when their rights come to be discussed here the greatest attention will be paid to their interests. They have long been acquainted with the habits of this country, and with the mode of administering justice here: until within these few years their causes used to come over here to be discussed, and I never heard that the decisions in our Courts ever awakened the least jealousy in the breasts of the inhabitants of that country.—*Lord Kenyon*, C.J., Wilson *v.* Marryat (1798), 8 T. R. 44.

Amusements.

The inhabitants have a right to take their amusements in a lawful way.—*Heath*, J., Fitch *v.* Fitch (1797), 2 Esp. 544.

Appeals.

1. It is the glory and happiness of our excellent constitution, that to prevent any injustice no man is to be concluded by the first judgment; but that if he apprehends himself to be aggrieved, he has another Court to which he can resort for relief; for this purpose the law furnishes him with appeals, with writs of error and false judgment.—*Pratt*, L.C.J., King *v.* Chancellor, &c., of the University of Cambridge (1720), 1 Str. Rep. 564.

See below, 4; JUDICIAL PROCEEDINGS, 11; JUSTICE, 6; NONSUIT.

[1] See also *per Bramwell* and *Cotton*, LL.JJ., in Bradlaugh *v.* The Queen (1878), L. R. 3 Q. B. D. 620, 640; and also the following *per Lord Watson* in Huntington *v.* Attrill, 62 L. J. Rep. P. C. C. 1893, p. 49: "A number of American authorities were cited in the course of the argument, which may be briefly noticed, seeing that they were made the subject of comment in both Courts below." And *per Fry*, J., in Steel *v.* Dixon (1881), L. R. 17 C. D. 831: "In coming to that conclusion, as I do upon principle, I am much strengthened by the American authorities to which my attention has been called."—*Id.* 50 L. J. Ch. 593.

The following statement shows that the American Courts adopt a principle of the Roman law compelling the creditor to sue the principal debtor before having recourse to the sureties. It is not adopted in our law but in most countries which follow the Roman civil law, and is quoted to show that American principles are not always in accord with our own: "A rule of such general adoption shows that there is nothing in it inconsistent with the relative rights and duties of principal and surety, and that it accords with a common sense of justice and the natural equity of mankind."—*Chancellor Kent*, Hayes *v.* Ward 1819), 4 Johns. (U. S.) Ch. Rep. 132.

Appeals—*continued.*

2. I think it beyond question that it is generally the duty of an appellate Judge to leave undisturbed a decision of which he does not clearly disapprove. I conceive that, in our Court, as in the civil law, it is the rule that "gravely to doubt is to affirm."—*Knight Bruce*, L.J., The Attorney-General *v.* The Corporation of Beverley (1854), 24 L. J. Rep. (N. S.) Part 7, Chan. p. 376.

   See JUDGES, 49.

3. It is needless to enter into many reasons for quashing the conviction, when one alone is fully sufficient.—*Lord Mansfield*, Rex *v.* Jarvis (1756), 1 Burr. Part IV., p. 152.

   See also MAGISTRATES, *infrà*.

4. It has not been deemed improper by the best of Judges to say that it would be a satisfaction not to them only, but to the profession at large, if a point of novelty and difficulty were taken to the Court of Appeal.[1]—*Kekewich*, J., *In re* England, L. R. 2 Ch. Div. [1895], p. 109.

   See also above, 1; CRIMINAL JUSTICE, 1, *n.*; PRIVY COUNCIL.

5. If no appeal were possible, I have no great hesitation in saying that this would not be a desirable country to live in. . . . It is quite true that there is enough difficulty in appealing as it is; but if there is to be no appeal at all possible the system would be intolerable.—*Bowen*, L.J., The Queen *v.* Justices of County of London, &c. (1893), L. R. 2 Q.B. 492.

6. A decision of the House of Lords requires no sanction.[2]—*Kekewich*, J., *In re* Weall, Andrews *v.* Weall (1889), L. R. 42 Ch. D. 679.

   See also JUDGES, 48, *n.*; 56, *n.*; PARLIAMENT, 18, 19, *suprà*. *See also* PRIVY COUNCIL.

7. A solemn decision of a competent Judge is by no means to be disregarded, and I ought not to overrule it without being clearly

[1] I should be desirous that my opinion should not be conclusive on the parties, if there were any mode by which our judgment could be reviewed in a Court of error.—*Lord Kenyon*, C.J., Petrie *v.* White (1789), 3 T. R. 9.

I am desirous that the case should be brought under the consideration of a higher tribunal, without any unnecessary delay, and to afford every facility in my power for the correction of any error into which I may have fallen.—*Lord Langdale*, M.R., Tullett *v.* Armstrong (1838), 1 Beav. 31.

It is a great satisfaction for me to find, that this matter will undergo investigation elsewhere, before it is finally decided.—*Lord Langdale*, M.R., Wilson *v.* Eden (1850), 12 Beav. 459.

I trust I have not misinterpreted the views of the Court of Appeal in a matter of so much importance, and, further, that if I have, any misconceptions of mine may be speedily removed by the decision of a higher tribunal.—*Stirling*, J., Verner *v.* General, &c. Trust (1894), L. R. 2 C. D. [1894], p. 260.

[2] A decision of the House of Lords upon a question of law is conclusive, and binds the House in subsequent cases. An erroneous decision can be set right only by an Act of Parliament.—*London Street Tramways Co.* v. *London County Council* (1898), L. R. Ap. Ca. [1898], 375.

Appeals—*continued.*

satisfied in my own mind that the decision is erroneous.—*Lord Langdale*, M.R., Ward *v.* Painter (1839), 2 Beav. 93.

See also JUDGES, 49; JUDICIAL DECISIONS, 7.

Arbitration.

Many cases occur, in which it is perfectly clear, that by means of a reference to arbitration, the real interests of the parties will be much better satisfied than they could be by any litigation in a Court of justice.—*Lord Langdale*, M.R., The Earl of Mexborough *v.* Bower (1843), 7 Beav. 132.

See also COMPROMISE; EVIDENCE, 33, *n.*

Army.

1. The British army has fought for the establishment of our nation, and on all these occasions it is known that the discipline which exists in that army has not destroyed its spirit. It is, thank God, what it was, still; and they will meet again with the same spirit when called on on a future occasion, and I hope and trust, whether men mean it or not, no man will be able to render a British soldier other than he is, one of the most respectable.—*Best*, J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 55.

   See also SCHOOLMASTER, 3.

2. A serjeant is a soldier with a halbert, and a drummer is a soldier with a drum.—*Denison*, J., Lloyd *v.* Wooddall (1748), 1 Black. 30.

Attorney-General.

1. I wish to say a word or two about the position of the Attorney-General, because in my judgment it is of importance in this case, and his position appears likely to be lost sight of. Everybody knows that he is the head of the English Bar. We know that he has had from the earliest times to perform high judicial functions which are left to his discretion to decide. For example, where a man who is tried for his life and convicted alleges that there is error on the record, he cannot take advantage of that error unless he obtains the fiat of the Attorney-General, and no Court in the Kingdom has any controlling jurisdiction over him. That perhaps is the strongest case that can be put as to the position of the Attorney-General in exercising judicial functions. Another case in which the Attorney-General is pre-eminent is the power to enter a *nolle prosequi* in a criminal case.[1] I do not say that

[1] *See also post*, POLITICS, 4, *n.*; SOVEREIGNTY, 9; and the author's treatise upon the Law and Privileges relating to the Attorney-General and Solicitor-General of England, p. 109. *À propos* of this quotation, it may be interesting to relate an anecdote told on the subject of the absolute authority of the Attorney-

Attorney-General—*continued.*

when a case is before a Judge a prosecutor may not ask the Judge to allow the case to be withdrawn, and the Judge may do so if he is satisfied that there is no case; but the Attorney-General alone has power to enter a *nolle prosequi*, and that power is not subject to any control. Another case is that of a criminal information at the suit of the Attorney-General, a practice which has, I am sorry to say, fallen into disuse. The issue of such an information is entirely in the discretion of the Attorney-General, and no one can set such an information aside. There are other cases to which I could refer to be found in old and in recent statutes, but I have said enough to show the high judicial functions which the Attorney-General performs.—*A. L. Smith*, L.J., Reg. *v.* Comptroller-General of Patents (1899), L. R. Q. B. D. Vol. 1 [1899], p. 913.

See also JUDGES, 79.

2. Though the mere opinion of an Attorney- or Solicitor-General ought not to be cited, yet coupled with the fact, it may have some weight as showing the general sense of professional men.—*Ashhurst*, J., King *v.* Pasmore (1789), 3 T. R. 243.

3. At common law, the Attorney-General is, when he is exercising his functions as an officer of the Crown, in no case that I know of a Court in the ordinary sense.—*Bowen*, L.J., *In the matter of* Van Gelder's Patent (1888), 6 Rep. Pat. Cas. 28.

Attorneys.

The Court must have ministers: the attornies are its ministers.—*Yates*, J., Mayor of Norwich *v.* Berry (1766), 4 Burr. Part IV., p. 2115.

See also COUNSEL, 20; LEGAL PROFESSION, 1; SOLICITOR AND CLIENT, 1; WITNESS, 3.

General to grant a *nolle prosequi*. It is to be found in an amusing anecdote in connection with a band of fanatics called the "Prophets" which existed in Chief Justice Holt's time (A.D. 1689—1710), and to which he had a particular antipathy. Holt, after having dealt with one of the false prophets named *Lacy*, some time after committed another of this brotherhood, called *John Atkins*, to take his trial. Lacy subsequently called at the Chief Justice's house, and desired to see him. *Servant:* "My lord is unwell to-day, and cannot see company." *Lacy* (in a very solemn tone): "Acquaint your master that I must see him, for I bring a message to him from the Lord God." The Chief Justice having ordered Lacy in, and demanded his business, was thus addressed: "I come to you a prophet from the Lord, who has sent me to thee, and would have thee grant a *nolle prosequi* for John Atkins, his servant, whom thou hast cast into prison." Chief Justice Holt: "Thou art a false prophet, and a lying knave. If the Lord God had sent thee it would have been to the Attorney-General, for He knows that it belongeth not to the Chief Justice to grant a *nolle prosequi;* but I, as Chief Justice, can grant a warrant to commit thee to bear him company." This, it may be added, was immediately done, and both prophets were convicted and punished. See *Rutt's* "Life of Calamy," II., pp. 111, 112. Also *Camp.* "Lives of the Ch. Jus." Vol. 2, p. 173.

Auditor.

It is the duty of the auditor to see that the authority to charge is not made a pretext for extravagance or favouritism.—*Lush*, J., Queen *v.* Cumberlege (1877), L. R. 2 Q. B. D. 370.

See PUBLIC SERVANT, 7.

Author.

1. Ideas are free. But while the author confines them to his study, they are like birds in a cage, which none but he can have a right to let fly: for till he thinks proper to emancipate them, they are under his own dominion.—*Yates*, J., Millar *v.* Taylor (1769), 4 Burr. Part IV., p. 2,379.

   See BOOKS, 1; MISCELLANEOUS, 55; MOTIVES, 9.

2. It is certainly not agreeable to natural justice that a stranger should reap the beneficial pecuniary produce of another man's work.[1]—*Willes*, J., Millar *v.* Taylor (1769), 4 Burr. Part IV., p. 2334.

   See LITERATURE, 2.

Banker.

Bankers have no right to establish a customary law among themselves, at the expence of other men.—*Foster*, J., Hankey *v.* Trotman (1746), 1 Black. Rep. 2.

Bankruptcy.

1. Bankruptcy in my opinion ever was and yet is considered as a crime, whatever tradesmen may now think of it. It was anciently punished with corporal punishment.—*Abney*, J., Tribe *v.* Webber (1744), Willes, 466 n. (*a*).
2. Bankruptcy is considered as a crime, and the bankrupt in the old laws is called an offender: but it is a principle of natural justice, and of our law, that *actus non facit reum nisi mens sit rea.*—*Lord Kenyon*, C.J., Fowler *v.* Padget (1798), 7 T. R. 514.
3. A man may be a bankrupt, and yet be honest, for he may become so by accident, and not of purpose to deceive his creditors.—*Roll*, C.J., Rooke *v.* Smith (1651), Style's Rep. 274.
4. The privileges of creditors to come in under a bankruptcy, and of bankrupts to be discharged, are co-extensive and commensurate.—*Lord Hardwicke, Ex parte* Groome (1740), 1 Atk. 115.
5. Taking out a commission of bankruptcy is a well-known mode of recovering a debt.—*Bayley*, J., Guthrie *v.* Fisk (1824), 3 B & C. 183.

[1] *Jure naturæ æquum est, neminem cum alterius detrimento et injuria fieri locupletiorem.*

Bastardy.

I rejoice to think that since the days of Queen Elizabeth, our laws have been so far humanized that a bastard child is no longer a mere thing to be shunned by an overseer,—whose existence is unrecognised until it becomes a pauper, and whose only legitimate home is a workhouse, that it is no longer permissible to punish its unfortunate mother with hard labour for a year, nor its father with a whipping at the cart's tail[1]; but that even an illegitimate child may find itself a member of some honest family, and that the sole obligation now cast upon its parents is that each may be compelled to bear his and her own fair share of the maintenance and education of the unfortunate offspring of their common failing.—*Hawkins*, J., Hardy *v.* Atherton (1881), L. R. 7 Q. B. 269.

Bible.

1. I do not know how far I ought to sit here and suffer a gentleman at the bar to bring forward parts of the Bible in this way. It is for you, gentlemen of the jury, to say whether you wish to hear them read.[2] —*Lord Kenyon*, Williams' Case (1797), 26 How. St. Tr. 683.
2. If the purity of the Bible is to be maintained, it must be by the King, who is the head both of our civil and religious establishments. It is not only his right, but it is his duty, to preserve the purity of the scriptures.—*Lord Hermand*, Manners and others *v.* The King's Printers (1826), 2 St. Tr. (N. S.) 225.

   See RELIGION, 1.
3. *Kissing the Book.*

   Morris. My lords, I except against this Brooke.

[1] See 18 Eliz. c. 3, and Datton's *Justices of the Peace*, 34.

[2] Upon reflecting upon my conduct during the trial, I have reason to accuse myself of improper conduct for permitting such arguments to be used. For, if I remember the conduct of the Court in causes of this nature, I should have remembered the opinion of the whole Court in the case of the King and Woolston, in 2 Strange, 834. The Court would not endure, would not suffer anything to be said against the established religion of the country. The order and decorum of the Court, which has been observed in almost every instance through my long professional life, has been guarded against anything of that kind: it has been protected by the decorum of the bar. It is impossible for the Court to foresee when a sentence begins how it will end, and, sometimes, mischief is done before we are sure that the sentence will conclude in an offensive manner. I must say this, to show that I ought not to have suffered what was spoken upon the trial in some parts of the defence.—*Lord Kenyon, id.* 709. *See also post*, RELIGION, 1.

Even in affidavits, on occasions of much less importance, where there is impertinent matter introduced, the Court will not permit it to be read; much less will they suffer such grievous and abusive observations on the scriptures.—*Lord Ellenborough*, Eaton's Case (1812), 31 How. St. Tr. 941. *See also antè*, AFFIDAVIT, 3.

Bible—*continued.*

Court. Sir, he is sworn, and you speak too late.

Morris. My lord, I appeal to him whether he be sworn or no.

Brooke. Sir, I am not to answer you, but the Court. My lord, I did not kiss the book.

Court.[1] Sir, that is no matter, it's but a ceremony.[2]

Morris' Case (1649), 4 How. St. Tr. 1255.

Bill of Lading.

The primary office and purpose of a bill of lading, although by mercantile law and usage it is a symbol of the right of property in the goods, is to express the terms of the contract between the shipper and the shipowner.—*Lord Selborne*, L.C., Glyn, Mills & Co. *v.* East and West India Dock Co. (1882), 7 App. Cas. 596.

Bills of Sale.

There is no darker page in the annals of English jurisprudence than that which contains the law relating to bills of sale, for, recent as it is, it is illogical, uncertain, and fuller of doubts and difficulties than any other part of our law.—*Cave*, J., *In re* Yarrow Bank (1889), L. J. R. 59 Q. B. D. 20.

Blasphemy.

God knows how often all of us have taken the great name of God in vain: or have said more than becomes us, and talked of things we should not do.[3]—*Jefferies*, L.J., Hampden's Case (1684), 9 How. St. Tr. 1103.

See also RELIGION; TRUTH, 11.

[1] *Coram: Puleston*, J., and *Thorpe*, B. —For a similar ruling *see per* Willes, L.C.J., Omichund *v.* Barker (1744), Willes' Rep. 548.

[2] According to Lord Campbell, when Bradshaw, Terryll and Fountain were appointed new Commissioners of the Great Seal in 1659, the oath was administered to them "holding up their hands," from which he conjectured that the ceremony of *kissing the book* was then abolished. *Lives of the Ld. Chan.*, Vol. 3, 3rd ed., p. 73. See the origin of lifting up the hand when taking an oath, set out in *Glove Law and Customs*, by the Author (1901), p. 96.

[3] There can be no doubt of the correctness of this statement (and Jefferies himself particularly sinned in that respect—*see*, for example, *post*, CRIMINAL JUSTICE, 20; TRUTH, 11), and if it issued as a warning, it was very *à propos*. The Judges of old, as if to give more emphasis to their sayings or to show how conscientious they were, frequently "took God's name in vain," or in the words of Lord Campbell, "talked perpetually of their conscience" (*see post*, EQUITY, 31, *n.*), which is so clearly shown by some of the quotations given in this work. The expressions or exclamations "Par Dieu," "By God," "Please God," and "In God's name," are of common occurrence in the Year-books and later authorities. More-

Books.

1. Books are published with an expectation, if not a desire, that they will be criticised in reviews, and if deemed valuable that parts of them will be used as affording illustrations by way of quotation, or the like, and if the quantity taken be neither substantial nor material, if, as it has been expressed by some Judges, "a fair use" only be made of the publication, no wrong is done and no action can be brought.—*Lord Hatherley*, Chatterton *v.* Cave (1877), L. R. 3 App. Cas. 492.

   See AUTHOR, 1.

2. Observe reader your old books, for they are the fountains out of which these resolutions issue.—*Lord Coke*, Spencer's Case (1583), 3 Co. 33.

Cases.

1. Many of the old cases are strange and absurd: so also are some of the modern ones.—*Wilmot*, J., Pillans *v.* Van Mierop (1764), 3 Burr. Part IV., p. 1671.
2. Some modern cases have in my opinion gone too far.—*Lord Kenyon*, Walford *v.* Duchess de Pienne (1797), 2 Esp. 555.

   See also COUNSEL, 18.

3. In our law every case hath its stand or fall from a particular reason or circumstance.—*Crewe*, C.J., Sury *v.* Pigot (1625), Popham, 166. See also Tudor's L. C. on Real Property (2d. ed.), 139.

   See STATUTES, 3.

4. Every case stands upon its own bottom.—*Sir F. Pemberton*, L.C.J., Fitzharris' Case (1681), 8 How. St. Tr. 280.
5. I have the strongest disinclination, as I believe every other Judge has, that any case should be decided otherwise than upon its merits. —*Pearson*, J., Haigh *v.* Haigh (1885), 31 L. R. C. D. 482. Also *per Willes*, J., Taylor *v.* Fisher and others (1774), Lofft. 769; also *per Lord Halsbury*, L.C., *In re* Bulwer Lytton's Will (1888), L. R. 38 C. D. 22.
6. The Court has not time to indulge in the discussion of imaginary cases. —*Lord Langdale*, M.R., Sidebotham *v.* Barrington (1841), 3 Beav. 529.

   See COUNSEL, 18, 22.

over, for example, see trial of the Lady Alice Lisle for high treason, 1685, in 11 How. St. Tr. 343, 346, where "Blessed God," or "Jesus God" become favourite expressions of Jefferies. Taken with the foregoing, the following precept may not be considered out of place: "Never talk of that which is within you; God is in us, as well as in you: never make a flourish of what is in you; for the fear of God is before our eyes as well as yours, and what we do, we shall have comfort in, in that it is according to the laws of England, the rules of which we are sworn to observe, and every man will do righteous things as well as you."—*Per Keble*, C.J., Lilburne's Case (1649), 4 How. St. Tr. 1313.

Cases—*continued.*

7. We are obliged to follow settled established rules already fixed by former determinations in cases of the same kind.—*Foster*, J., Rex *v.* Wheatly (1760), 2 Burr. Part IV. 1129.

   See below, 21; CASES, 21; DOCTRINE, 1; PRECEDENTS, 8, 13.

8. We must not overturn the cases.—*Buller*, J., Ablett *v.* Ellis (1798), 2 Bos. & Pull. 249.

   See STATUTES, 13.

9. The use of cases is to establish principles; if the cases decide different from the principles, I must follow the principles, not the decisions.[1]—*Lord Kenyon*, Duke of Leeds *v.* New Radnor (1788), 2 Brown's Rep. (by Belt), 339.

   See also 21, *below;* COMMON LAW, 4; DOCTRINE, 2; JUDICIAL DECISIONS, 9; LAW, 2, 53; PRECEDENTS, 18.

10. Pray let us so resolve cases here that they may stand with the reason of mankind, when they are debated abroad. Shall that be reason here that is not reason in any part of the world besides?—*Lord Nottingham*, Duke of Norfolk's Case (1680), 3 Ch. Ca. 33.[2]

    See JUDGES, 7, 50.

11. The reason and spirit of cases make law; not the letter of particular precedents.—*Lord Mansfield*, Fisher *v.* Prince (1763), 3 Burr. 1364.

    See PRECEDENTS, 8.

12. The case in *Levinz* was about an hundred years ago: Put a marginal

[1] The same doctrine was laid down by Lord Kenyon in Walpole *v.* Lord Cholmondeley (1797), 7 T. R. 148, and it might be multiplied *ad infinitum:* and Judges have not been slow in dealing with *precedents* (*q.v.*) as they have thought fit. The following may be quoted as examples from a very early period: In reference to the case of Tayler *v.* Sayer (1599), regarding a devise (Cro. 743), *Hale*, C.J., in 1672, said that that case was "*a little too rank.*" (King *v.* Melling, 1 Ventr. 229; also quoted in Robinson *v.* Robinson (1756), 1 Burr. Part. IV. 49).

In Ashby *v.* White (1703), *Powys*, J., said: "This being an unprecedented case, I shall conclude with a saying of my lord Coke: *Omnis innovatio plus novitate perturbat quam utilitate prodest.*" (See Foorde *v.* Hoskins (1614), 2 Bulst. 338.)

"As long as that case (Soams and Barnardiston's Case, 2 Sid. 168) is law, I must judge so, if that case was out of the way I might be of another opinion."—*Powell*, J., Kendall *v.* John (1706), Fortesc. Rep. 125.

Per Wilmot, J., in Rex. *v.* Marsden (1765), 3 Burr. Part IV., p. 1818: "This case (*i.e.*, Case of Hertford (*Quo Warranto*), 1 Salk. 374) I own is a great authority and staggers one."

Alderson, B., in Mearing *v.* Hellings (1845), 14 M. & W. 712, said: "I accede to the authority of that case (Hastelow *v.* Jackson, 8 B. & C. 221), although I think it a very strong decision. It does not convince me; it overcomes me."

Said *Lindley*, L.J., in reference to an argument before him in *Re* Lands Allotment Company (1894): "I cannot be party to any decision so supremely absurd."—L. R. Ch. D. Vol. 1, 1894, p. 631.

[2] Quoted by *Davey*, L.J., in Wigram *v.* Buckley, L. R. 3 Ch. Div. [1894], p. 497.

Cases—*continued.*

note, and it will serve an hundred years hence.[1]—*Lord Mansfield*, Bolton *v.* Smith (1774), Lofft. 465.

See PRECEDENTS, 16.

13. Never trust any note cited, when not consonant with the general principles of law, justice, and equity. It must be wrong.—*Lord Mansfield*, Anonymous (1774), Lofft. 610.

See 9, *above, and references;* COMMERCE, 20.

14. A case may not be the less doubtful because I entertain no doubt on the subject; but that is doubtful concerning which learned men differ.[2]—*Heath*, J., Cox *v.* Morgan (1801), 1 Bos. & Pull. 413.

See CONSTRUCTION, 28; JUDGES, 72; MISCELLANEOUS, 2.

15. This is an English case, which it is my duty to decide according to the principles of English law.—*Lord Watson*, Ewing *v.* Orr Ewing (1883), L. R. 9 App. Ca. 48.

See below, 21; ADMINISTRATION OF JUSTICE, 11; CONSTRUCTION, 8; COURTS, 14; JUDGES, 62; PRECEDENTS, 18.

16. I can only regret that I am obliged to give a decision which conflicts with the justice of the case, and wrongs those to whom I would rather that justice should be done.[3]—*Goulburn*, Cr., *Ex parte* Baldwin, bank. (1860), L. R. L. T. Rep. Vol. 2 (N. S.) 226.

See below, 20; JUDICIAL DECISIONS, 23; PRECEDENTS, 15. *See also* LAW, 42, 43.

17. I confess that when I am sought to be driven to a conclusion which appears to me unreasonable and unjust, I at once suspect the validity of the premises, even if I can detect no flaw in the reasoning from them.—*Lindley*, L.J., *In re* Holford (1894), L. R. 3 Ch. 45.

18. Without an express authority, so strong as not to be gotten over, we ought not to determine a case so much against reason, as that the Parliament should be obliged to interfere to set it right.—*Lord Mansfield*, Mayor, &c. of Colchester *v.* Seaber (1765), 3 Burr. Part IV., p. 1870.

19. For several reasons we should not depart from these adjudged cases; but chiefly, from the inconvenience of altering and overturning settled determinations. It is best, *stare decisis*. The overturning settled determinations would be of very bad consequence: they ought not to

[1] This was an action for toll wherein 3 Lev. 734 was cited.

[2] "The most learned doubteth most."—*Co. Lit.* 338 *a*.

[3] "I would have it understood from this judgment, that no principle of law exists so diametrically opposite to justice. Upon form, against another, it is very well; but by way of serious conclusion, it is unjust and unconscientious."—*Lord Mansfield*, Lord Mexborough *v.* Sir John Delaval (1773), Lofft. 314.

Cases—*continued.*

be shaken.—*Lord Mansfield*, Rex *v.* Inhabitants of Underbarrow and Bradley-Field (1766), Burrow (Settlement Cases), 548.

See also DOCTRINE, 1; PRECEDENTS, 13.

20. Whatever might have been my opinion, had this been a new case, I must hold myself bound by decided cases.—*Lord Kenyon*, Cross *v.* Glode (1797), 2 Esp. 575.

See above, 9, 16; LAW, 44.

21. The only use of authorities, or decided cases, is the establishment of some principle which the Judge can follow out in deciding the case before him. There is, perhaps, nothing more important in our law than that great respect for the authority of decided cases which is shown by our tribunals. Were it not for that, our law would be in a most distressing state of uncertainty, and so strong has that been my view, that when a case has decided a principle, although I myself do not concur in it, and although it has been only a decision of a tribunal of co-ordinate jurisdiction, I have felt bound to follow it when it is of respectable age and has been used by lawyers as settling the law, leaving to the Appellate Court to say that case is wrongly decided if the Appellate Court should so think.—*Jessel*, M.R., *In re* Hallett's Estate. Knatchbull *v.* Hallett (1879), L. R. 13 C. D. 712; 49 L. J. Ch. 419.

See also above, 7, 9, 13, 20; COMMON LAW, 12; CONSTRUCTION, 19, 28; COUNSEL, 17, *n.*; COURTS, 14; DOCTRINE, 1, 2; JUDGES, 10, 48, 50, 70; JUDICIAL DECISIONS, 5, 9, 12; LAW, 53, 73; PRACTICE, 5; PRECEDENTS, 18, 20; PRIVY COUNCIL; WILL, 9.

Chancery.

1. I hope the Chancery will not repeal an Act of Parliament.[1] Waste in the house is waste in the curtilage; and waste in the hall is waste in the whole house.—*Hale*, C.J., Cole *v.* Forth (1672), 1 Mod. Rep. 95.

See DICTUM, 4.

2. I do not think it is the business of the Court of Chancery to inquire

[1] Chancery is ordained to supply the law, and not to subvert the law.—*Lord Bacon*, Bac. Speech, 4; Bac. Works, 488.

In Chancery, every particular case stands upon its own circumstances, and although the common law will not decree against the general rule of law, yet Chancery doth, so as the example introduce not a general mischief. Every matter, therefore, that happens inconsistent with the design of the legislator, or is contrary to natural justice, may find relief here. For no man can be obliged to anything contrary to the law of nature; and indeed no man in his senses can be presumed willing to oblige another to it.—1 *Fonbl. Eq.* B. 1, c. 1, § 3; *Story, Eq. J.* 10.

Chancery—*continued.*

into motives.—*Sir W. M. James*, L.J., Denny *v.* Hancock (1870), L. R. 6 Ap. Ca. 10.

3. It is surely desirable that the rules of this Court should be in accordance with the ordinary feelings of justice of mankind.—*Sir W. M. James*, L.J., Pilcher *v.* Rawlins (1872), L. R. 7 C. Ap. Ca. 273.

4. It is not agreeable to any man to be a defendant to an adverse Chancery suit, and I should be very sorry to sanction any principle which might lead to an increase in the number of defendants, and to the multiplication of litigant parties.—*Sir R. Malins*, V.-C., Clark *v.* Lord Rivers (1867), L. R. 5 Eq. Ca. 96.

See LITIGATION, 2; TRANSFER OF RIGHT OF ACTION.

5. The Court of Chancery is not a Court of Record, and a Judge in Chancery is not the keeper of the records of his own Court.—*Sir G. Jessel*, M.R., *In re* Berdan's Patent (1875), L. R. 20 Eq. Ca. 347.

See COURTS, 13.

6. Born and bred, so to say, in Chancery, I have a strong leaning towards the rule of the Court of Chancery, of requiring full discovery.—*Kekewich*, J., Ashworth *v.* Roberts (1890), L. J. Rep. (N. S.) 60 C. D. 28.

See also DISCOVERY, 2.

7. This Court is not a Court of penal jurisdiction. It compels restitution of property unconscientiously withheld; it gives full compensation for any loss or damage through failure of some equitable duty; but it has no power of punishing any one.[1]—*Sir W. M. James*, L.J., Vyse *v.* Foster (1872), L. R. 8 Ch. Ap. Ca. 333.

See antè, ADMINISTRATION OF JUSTICE, 18; *and references there given.*

8. In the Court of Chancery, I think we are obliged to cut the knot as to the question of time, by naming some time.—*Lord Cranworth*, Smith *v.* Kay (1859), 7 H. L. Cas. 772.

See also MISCELLANEOUS, 22; TIME, *suprà.*

9. This Court is not, as I have often said, a Court of conscience, but a Court of Law.—*Jessel*, M.R., *In re* National Funds Assurance Co. (1878), L. R. 10 C. D. 128.

See also ADMINISTRATION OF JUSTICE, 18, *and references there given.*

10. The cause why there is a Chancery is, for that men's actions are so divers and infinite, that it is impossible to make any general law, which may aptly meet with every particular act, and not fail in some

[1] See also *per Lord Cranworth* in Att.-Gen. *v.* Alford, 4 D. M. & G. 843.

Chancery—*continued.*

circumstances.—*Lord Ellesmere*, Earl of Oxford's Case (1661), Rep. in Ch. 4

See also ADMINISTRATION OF JUSTICE, 15; COMMON LAW, 9; COURTS, 14; CRIMINAL JUSTICE, 29; EQUITY, 19, 20; LAW, 55, 62; PARLIAMENT, 3, *n.*; PRACTICE, 5; STATUTES, 2.

11. The Court of Chancery never decrees that shall be evidence, which in its nature is not evidence.—*Aston*, J., Ludlam on the Demise of Hunt (1773), Lofft. 364.

12. For us to reverse the judgment of a Lord Chancellor would require a tremendous case—a case of a clear error.[1]—*James*, L.J., Wheeldon *v.* Burrows (1879), 12 Ch. D. 47; *per Thesiger*, L.J., 48 L. J. Ch. 859. Also *per Cotton*, L.J., in *In re* Watts, Cornford *v.* Elliott (1885), 29 Ch. D. 953; 55 L. J. Ch. 334.

See 13, *below; also* COMMON LAW, 10; PRACTICE, 5.

13. I may say I do not consider the decision of a Lord Chancellor is absolutely binding upon us, because every Lord Chancellor's decision was liable to be reheard not only by himself but by his successor, and there are known instances of it. When I was sitting with Lord Justice *Mellish* we did rehear decisions of Lord Chancellor *Selborne*. There is always this to be considered, that it is the decision, no doubt, of a superior Court of Appeal; but it is always qualified by this, that according to the old practice of the Court of Chancery it was liable to be reheard.—*James*, L.J., Ashworth *v.* Munn (1880), L. R. 15 C. D. 377. See also *per Jessel*, M.R., in Henty *v.* Wrey (1882), L. R. 21 C. D. 346.

See 12, *above, and references there given.*

Character.

1. I think there should be no occasion on which it is absolutely, as a point or rule of law, impossible for a man to redeem his character.—*Lord Coleridge*, C.J., *In re* Brandreth (1891), L. J. 60 Q. B. D. 504.

2. To rake into the whole course of a man's life is very hard.[2]—*Jefferies*, L.C.J., Hampden's Case (1684), 9 How. St. Tr. 1103.

See 4, *below;* ADMINISTRATION OF JUSTICE, 5; CRIMINAL JUSTICE, 4; EVIDENCE, 14; MISCELLANEOUS, 18; WITNESS, 2.

3. An accused man should have the benefit of the presumption of

[1] I think the Lord Chancellor, wherever he is sitting and whatever cases he is trying, is still Lord Chancellor, and that his decision is binding on me.—*Fry*, L.J., *Ex parte* Vicar of St. Mary, Wigton (1881), L. R. 18 C. D. 648.

[2] We would not suffer any raking into men's course of life, to pick up evidence that they cannot be prepared to answer. —*Withins*, J., Hampden's Case (1684), 9 How. St. Tr. 1103.

Character—*continued.*

integrity which arises from the virtue of a lifetime.—*Lord O'Hagan*, Symington *v.* Symington (1875), L. R. 2 Sc. & D. 428.

See REPUTATION, *suprà, and references there given.*

4. You have no right, for the purpose of justifying a libel, to inquire into a man's life and opinions.—*Pollock*, C.B., Derby *v.* Ouseley (1856), 4 W. R. 464.

See 2, *above, and references there given.*

5. There is in many, if not in all men, a constant inward struggle between the principles of good and evil; and because a man has grossly fallen, and at the time of his fall added the guilt of hypocrisy to another sort of immorality, it is not necessary, therefore, to believe that his whole life has been false, or that all the good which he ever professed was insincere or unreal.—*Lord Selborne*, Symington *v.* Symington (1875), L. R. 2 Sc. & D. 428.

See also MISCELLANEOUS, 18; REPUTATION, *suprà, and references there given.*

6. In my opinion the best character is generally that which is the least talked about.—*Erle*, C.J., The Queen *v.* Rowton (1865), 34 L. J. M. C. 63.

See JUDGES, 26, *n.*

7. Means of knowledge is the foundation of the general inference of character.—*Erle*, C.J., Reg. *v.* Rowton (1865), 10 Cox, C. C. 34.

See also JUDGES, 74.

8. In a doubtful case, a good character will have some weight with the Court, but in a clear conviction, it can be of no avail.—*Willes*, J., R. *v.* Bembridge (1783), 22 How. St. Tr. 160.

See also ADMINISTRATION OF JUSTICE, 33; CRIMINAL JUSTICE, 25; PUNISHMENT, 5.

Charity.

1. There is no charitable purpose which is not a benevolent purpose.[1]—*Lord Langdale*, M.R., Kendall *v.* Granger (1842), 5 Beav. 302.

See post, CHRISTIANITY, 11.

2. I do not see any difference between a gift to keep in repair what is called "*God's house*" and a gift to keep in repair the churchyard round it, which is often called "*God's acre.*"[2]—North, J., *In re* Vaughan, Vaughan *v.* Thomas (1886), L. R. 33 C. D. 192.

[1] But see *contrâ*, *per* Lord Bramwell, "Every benevolent purpose is not charitable."—Commissioners of Income Tax *v.* Pemsel (1891), 61 L. J. Rep. Q. B. 281.

[2] *Quod datum est ecclesiæ, datum est Deo.* (What is given to the Church is given to God.)—2 *Inst.* 2. With regard to the application of the term, "God's acre" to

Christianity.

1. The Christian religion is from heaven. The gates of hell shall not prevail against it, and its professors are not afraid of its being examined. It has stood for eighteen hundred years, and it will stand long.[1]—*Best*, J., Trial of Mary Ann Carlile (1821), 1 St. Tr. (N. S.) 408.

   See COURTS, 3, *n.*

2. The Court has no fears for the safety of the Christian religion. It does not believe that the rock upon which Christianity stands can ever be shaken.[2]—*Bayley*, J., Trial of Mary Ann Carlile (1821), 1 St. Tr. (N. S.) 1050.

3. The Christian religion is part of the law of the land.[3]—*Kenyon*, L.C.J., William's Case (1797), 26 How. St. Tr. 704.

   See also RELIGION.

churchyards, Longfellow commences one of his poems thus:

"I like that ancient Saxon phrase, which calls
The burial ground *God's Acre*. It is just;
It consecrates each grave within its walls,
And breathes a benison o'er the sleeping dust."

By a "*Saxon* phrase" Longfellow undoubtedly meant *German*. In Germany, *Gottes-acker* is a name for churchyard; and it is to be found in Wachter's *Glossarium Germanicum*, as well as in modern dictionaries. Very interesting are also the other allegorical names which have been given to the burial places of the dead. They are enlarged upon in Minshew's *Guide to Tongues*, under the head "Church-yard": — "Cœmeterium (from the Greek) signifying a dormitory or place of sleep. And a Hebrew term (so Minshew says), Beth-chajun, *i.e.*, domus viventium, 'The house of the living,' in allusion to the resurrection." The term *God's Acre*, as applied to a church garth, would seem to designate consecrated ground set apart as the resting-place of His faithful departed, sown with immortal seed (1 Cor. xv. 38), which shall be raised in glory at the great harvest (Matt. xiii. 39; Rev. xiv. 15). The church-yard is "dedicated wholly and only for Christian burial," and "the bishop and ordinary of the diocese, as *God's minister*, in *God's stead accepts it* as a freewill offering, to be severed from all former profane and common uses, to be held as holy ground," and "to be God's *storehouse* for the bodies of His saints there to be interred."—See "Bishop Andrewes' Form of Consecration of a Churchyard," *Minor Works* (1846), pp. 328—333.

[1] I will not suffer the Christian religion to be reviled, while I sit in this Court, and possess the power of preventing it.—*Lord Ellenborough*, Eaton's Case (1812), 31 How. St. Tr. 939.

[2] The preservation of Christianity as a national religion, is, abstracted from its own intrinsic truth, of the utmost consequence to the civil state.—*Sir Wm. Blackstone* (1765), *Com.* Bk. 4 Ch. iv., p. 35.

Ecclesia non moritur: The Church does not die.—2 *Inst.* 3.

[3] The first case which is said to have decided that Christianity is part and parcel of the common law of England is in the Year-book [34 Hen. VI., p. 40]: The case was *quare impedit* against the Bishop of Lincoln; and the passage, which is obscure, is as follows:—"Prisot. A tielx Leis que ils de Saint Eglise ont en ancien Scripture, covient a nous a donner credence; car ces Common Ley sur quel touts manieres Leis sont fondes. Et auxy, Sir, nous sumus obliges de conustre lour Ley de Saint Eglise: et semblablement ils sont obliges de conustre notre Ley."—J. Humphrey Bohun *v.* John Broughton, Henry VI. Anno 34. It may be thus translated: "As to such laws as they of holy Church have *in ancient Scripture*, it is proper for us to give credence; for that [is as it were] common law, on which all sorts [of] laws are

Christianity—*continued.*

4. It is certain that the Christian religion is part of the law of the land. —*Patteson*, J., Rex *v.* Hetherington (1841), 5 Jur. (O. S.) 530.

5. We have no law practised in this land but is the law of God; and so did the lawyers maintain it before the King in Henry the 8th's time, the pope's legates, and chief archbishops and bishops of England; and did then prove it to them, that there was no law practised in England but the law of God, which our ministers are loth to touch, and busy themselves to study.—*Keble*, L.P., Christopher Love's Case (1651), 5 How. St. Tr. 238.

   See also 8, *below;* Law, 56, 57, *suprà.*

6. Christianity came in here by external spiritual force, and discipline, was introduced as a custom, and is part of the law.—*Hale*, C.J., Taylor's Case (1675), 1 Vent. 293; 3 Keb. 607, 621; *see also* Rex *v.* Woolston, Fitz. 64; 2 Str. Rep. 834.

   See Religion, 4.

7. I apprehend that it is the duty of every Judge presiding in an *English* Court of justice, when he is told that there is no difference between worshipping the Supreme Being in chapel, church, or synagogue to recollect that Christianity is part of the law of *England.* —*Lord Hardwicke*, L.C., *In re* Masters, &c. of the Bedford Charity (1819), 2 Swanston's Rep. 527; *per Kelly*, C.B., Cowan *v.* Milbourn (1867), 15 W. R. 751. See also Att.-Gen. *v.* Pearson, 3 Mer. Rep. 353.

   See also Religion, 1.

8. The second ground of the law of *England* is the law of God.[1]—*Hyde*, J., Manby *v.* Scott (1663), 1 Mod. Rep. 126.

   See 5, *above, and references there given.*

9. The laws of the realm do admit nothing against the law of God.—*Hobart*, C.J., Colt *v.* Glover (1614), Lord Hobart's Rep. 149

10. It is no longer true in the sense in which it was true when these *dicta* were uttered, that "Christianity is part of the law of the land." Nonconformists and Jews were then under penal laws, and were hardly allowed civil rights. But now, so far as I know the law, a Jew might be Lord Chancellor. Certainly he might be Master of the Rolls, and the great Judge whose loss we have all had to deplore[2] might have had to try such a case, and if the view of the law supposed

founded. And thus, Sir, we are obliged to take cognizance of their law of holy Church; and likewise they are obliged to take the same cognizance of our law." Wingate evidently grounds his third maxim on the above passage: "To such lawes as have warrant in Holy Scripture, our law giveth credence, *et contra.*"—*Maximes*, p. 6. For a further exposition of this subject, the reader is referred to the *Law Times*, July 3, 1880, p. 170.

[1] See also Dr. & St. c. 6, fo. 10.

[2] Sir George Jessel was undoubtedly the Judge here referred to.

Christianity—*continued.*

be correct, he would have had to tell the jury, perhaps partly composed of Jews, that it was blasphemy to deny that Jesus Christ was the Messiah, which he himself did deny, and which Parliament has allowed him to deny, and which it was part of "the law of the land" that he might deny.—*Lord Coleridge*, L.C.J., Reg. *v.* Ramsay and Foote (1883), 15 Cox, C. C. 235.

11. The duty of relieving his fellow creature in distress is imposed on the Christian irrespective of religious doctrines and tenets, and notwithstanding that the object of charity may worship God in an erroneous manner, but in that which he believes to be most acceptable to his Creator.—*Sir John Romilly*, M.R., Att.-Gen. *v.* Calvert (1857), 23 Beav. 258.

See antè, CHARITY, 1; PROTECTION, 2, *and references there given.*

12. There is no act which Christianity forbids, that the law will not reach[1]: if it were otherwise, Christianity would not be, as it has always been held to be, part of the law of England.—*Best*, C.J., Bird *v.* Holbrook (1828), 4 Bing. 641.

Clergy.

1. Minister doth not always import an inferior to him to whom he doth minister: for the Psalm saith, God hath made man *paulo inferiorem Angelis;* and yet in the first chapter to the Hebrews it is said, that the Angels are ministering spirits, sent forth for the good of God's saints.—*Hobart*, C.J., Pits *v.* James (1614), Lord Hobart's Rep. 124.
2. Though all good men be called God's servants in their general vocation, yet they cannot be called the minister of God but to a more special use.—*Hobart*, C.J., Pits *v.* James (1614), Lord Hobart's Rep. 125.

Club.

Clubs are very peculiar institutions. They are societies of gentlemen who meet principally for social purposes, superadded to which there are often certain other purposes, sometimes of a literary nature, sometimes to promote political objects, as in the *Conservative* or the *Reform Club*. But the principal objects for which they are designed are

[1] This is nonsense. For example, a man may do a selfish and malicious act on his own land, on purpose to injure his neighbour, and the common law does not forbid it, so long as it is not a public nuisance. In like manner he may take advantage of the un-Christian doctrine of *caveat emptor*. Perhaps what the judge here says is to be read in connection with his remark in Robertson *v.* M'Dougall (1828), 4 Bing. 679, "the law has respect to human infirmity." *See post*, LAW, 35.

Club—*continued.*

social, the others are only secondary. It is, therefore, necessary that there should be a good understanding between all the members, and that nothing should occur that is likely to disturb the good feeling that ought to subsist between them.—*Lord Romilly*, M.R., Hopkinson *v.* Marquis of Exeter (1867), L. R. 5 Eq. Ca. 67.

Cock-Fighting.

Cock-fighting must be considered a barbarous diversion.—*Lord Ellenborough*, Squires *v.* Whisken (1811), 3 Camp. Rep. 141.

See also GAMBLING.

Coercion.

Legal coercion is a course which the law allows.—*Rooke*, J., Cox *v.* Morgan (1801), 1 Bos. & Pull. 410.

Coke.

1. The greatest lawyer, Sir Edward Coke.[1]—*Mallet*, J., Harrison's Case (1660), 5 How. St. Tr. 1030.
2. The learning and industry of that great man Sir *Edward Coke*, whose name ought never to be mentioned in a Court of law without the highest respect.[2]—*Eyre*, C.J., Jefferson *v.* Bishop of Durham (1797), 2 Bos. & Pull. 123.
3. Jeo concede que est le opinion Seigniour Coke, mes *salva reverentia* al ey grand sage et pere del ley. (I grant that it is the opinion of Lord Coke, but *salva reverentia* to so great a sage and father of the law).—*Vaughan*, J., Tustian *v.* Roper (1670), Jones's (Sir Thos.) Rep. 35.
4. That great lawyer was much heated in the controversy between the Courts at *Westminster* and the Ecclesiastical Courts.[3] In every part of his conduct his passions influenced his judgment. *Vir acer et vehemens.* His law was continually warped by the different situations in which he found himself.[4]—*Heath*, J., Jefferson *v.* Bishop of Durham (1797), 2 Bos. & Pull. 131.

[1] "Good old Sir *Edward Coke*"—an allusion to this great man by counsel in Campbell *v.* Hall (1774), Lofft. 695.

[2] "Sir E. Coke, a chief justice of great learning, and of as great integrity."—*Sir R. Atkyns*, L.C.B., Trial of Sir Edw. Hales (1686), 11 How. St. Tr. 1237.

[3] "The ecclesiastical courts are not inferior to the Courts at *Westminster* Hall."—*Per Littledale*, J., Ricketts *v.* Bodenham (1836), 4 A. & E. 446.

[4] "Yet we are obliged," says Lord Campbell, "to regard a man with so little about him that is ornamental or entertaining, or attractive, as a very considerable personage in the history of his country. Belonging to an age of gigantic intellect and gigantic attainments, he was admired by his contemporaries, and time has in no degree impaired his fame. He is most familiar to us as an author. Smart legal practitioners, who are only desirous

Coke—*continued.*

5. Don't quote the distinction, for the honour of my lord Coke.[1]—*Lord Mansfield*, Campbell *v.* Hall (1774), Lofft. 16.

Commerce.

1. This being an island, all imaginable encouragement ought to be given to trade.—*Harcourt*, Lord Keeper, Brown *v.* Litton (1711), 1 P. Wms. 141.
2. The great source of the flourishing state of this kingdom is its trade and commerce.—*Ashhurst*, J., Jordaine *v.* Lashbrooke (1798), 7 T. R. 605.
3. The freedom of trade, like the liberty of the Press, is one thing; the abuse of that freedom, like the licentiousness of the Press, is another. God forbid that this Court should do anything that should interfere with the legal freedom of trade.—*Grose*, J., King *v.* Waddington (1880), 1 East, 163.

   See LIBERTY OF THE PRESS, 5.
4. It is essential, when persons in trade come into this Court, that they should remember that the administration of equity is founded on perfect truth, and that if persons attempt to mislead the public by stating that which is not true,[2] this Court will restrain them upon a clear case being made out against them.—*Lord Romilly*, M.R., Cocks *v.* Chandler (1871), L. R. 11 Eq. Ca. 449.

   See CONTRACT, 6; TRUTH, 2, 8.
5. Some confidence there must be between merchant and manufacturer. In matters exclusively within the province of the manufacturer the merchant relies on the manufacturer's skill, and he does so all the more readily when he has had the benefit of that skill before.—*Lord Macnaghten*, Drummond *v.* Van Ingen (1887), L. R. 12 Ap. Cas. 297.
6. An energetic tradesman naturally develops and extends his business.

of making money by their profession, neglect his works, and sneer at them as pedantic and antiquated; but they continue to be studied by all who wish to know the history and to acquire a scientific and liberal knowledge of our judicial and political institutions. His *Opus Magnum* is his Commentary upon Littleton, which in itself may be said to contain the whole common law of England as it then existed. Notwithstanding its want of method and its quaintness, the author writes from such a full mind, with such mastery over his subject, and with such unbroken spirit, that every law student who has made, or is ever likely to make, any proficiency, must peruse him with delight."—*Lives of the Chief Justices*, Vol. 1, 338. See also the comments on Coke in the *Wensleydale Peerage Case* (1856), 8 St. Tr. (N. S.) 551.

[1] Exclamation in reference to *Calvin's Case* (7 Co. 17), wherein appears a distinction between counties vesting by conquest and descent. It was argued that "the doctrine imputed to the Judges by my Lord *Coke* was not entirely extra-judicial," and this brought forth the above remark.

[2] "Let me have no lying; it becomes none but tradesmen.—*Winter's Tale*, iv. 3.

Commerce—*continued.*

One business runs into another, and the line of demarcation is often indistinct and undefined. The linen draper of to-day in the course of a few years may come to be the proprietor of an establishment providing everything that man wants, or woman either, from the cradle to the grave.—*Lord Macnaghten*, Tailby *v.* Official Receiver (1888), L. R. 13 Ap. Cas. 545.

7. The English trader is generally too much occupied with his business to devote much time to the invention of new or fancy words, and he is not always gifted with that degree of fancy which is capable of coining new words. Besides the English public is not so ready, apparently, to buy articles passing under an entirely new name, which may give rise to a suspicion of adulteration.—*Chitty*, J., *In re* Trade-Mark "Alpine" (1885), L. R. 29 C. D. 880.

8. The word commission sounds sweet in a merchant's ear.—*Sir W. Scott*, The Gratitudine (1801), 3 Rob. Adm. Rep. 240.

9. What is one man's gain is another's loss.—*Lord Coleridge*, Connor *v.* Kent (1891), 61 L. J. Rep. Mag. Ca. 18.

See 10, *below.*

10. It must be remembered that all trade is and must be in a sense selfish; trade not being infinite, nay, the trade of a particular place or district being possibly very limited, what one man gains another loses.[1] In the hand to hand war of commerce, as in the conflicts of public life, whether at the bar, in Parliament, in medicine, in engineering (I give examples only), men fight on without much thought of others, except a desire to excel or to defeat them. Very lofty minds, like Sir Philip Sidney with his cup of water, will not stoop to take an advantage, if they think another wants it more. Our age, in spite of high authority to the contrary, is not without its Sir Philip Sidneys; but these are counsels of perfection which it would be silly indeed to make the measure of the rough business of the world as pursued by ordinary men of business. The line is in words difficult to draw[2]. . . .—*Lord Coleridge*, C.J., Mogul Steamship Co. *v.* McGregor, Gow & Co. (1888), L. R. 21 Q. B. D. 553.

See 15, *below;* GAMBLING.

11. Merchants know perfectly well what they mean when they express themselves, not in the language of lawyers, but in the language of courteous mercantile communication.—*Lord Cairns*, Shepherd *v.* Harrison (1871), L. R. 5 Eng. & Ir. App. Cas. 133.

[1] *See* 9, *above;* TEXT BOOKS, 4.

[2] This case decided that an association formed to keep trade in their own hands and not for injuring another is not unlawful.

Commerce—*Continued.*

12. The experience we have in Courts of justice leads us to know that persons who trade without due caution often find their hopes deceived: they find in the result that they have parted with goods for which they never can obtain the money.—*Abbott*, C.J., Montague *v.* Benedict (1825), 3 B. & C. 673.

See also MONEY, 2; PROPERTY, 12; TITLE, 4.

13. It is when merchants dispute about their own rules that they invoke the law.—*Brett*, J., Robinson *v.* Mollett (1875), L. R. 7 Eng. & Ir. Ap. 817.

14. The great object of the law is to encourage commerce.—*Chambre*, J., Beale *v.* Thompson (1803), 3 Bos. & Pull. 421.

See below, 32.

15. It is admitted that there may be fair competition in trade, that two may offer to join and compete against a third. If so, what is the definition of fair competition? What is unfair that is neither forcible nor fraudulent.—*Lord Bramwell*, Mogul Steamship Co. *v.* McGregor, Gow and others (1892), 66 L. T. R. 6.

See 10, *above*.

16. I should regret to find that the law was powerless to enforce the most elementary principles of commercial morality.—*Lord Herschell*, Reddaway *v.* Banham (1896), L. R. App. Ca. [1896], 209.

See 13 *above*.

17. A trader is trusted upon his character and visible commerce: that credit enables him to acquire wealth. If by secret liens a few might swallow up all, it would greatly damp that credit.—*Lord Mansfield*, Worseley *v.* Demattos (1758), 1 Burr. Part IV., p. 483.

18. Men lend their money to traders upon mortgages or consignments of goods, because they suspect their circumstances, and will not run the risque of their general credit.—*Lord Mansfield*, Foxcroft *v.* Devonshire (1759), 2 Burr. Part IV., p 942.

See MONEY, 2.

19. It is the privilege of a trader in a free country, in all matters not contrary to law, to regulate his own mode of carrying it on according to his own discretion and choice.[1]—*Alderson*, B., Hilton *v.* Eckersley (1856), 6 Ellis & B. 74.

20. The law merchant is a system of equity, founded on the rules of equity, and governed in all its parts by plain justice and good faith. —*Buller*, J., Master *v.* Miller (1763), 4 T. R. 320.

See 29, *below*.

[1] *Arbitrio domini res æstimari debet:* The price of a thing ought to be fixed by its owner.—4 *Inst.* 275.

Commerce—*continued.*

21. There are many situations in life, and particularly in the commercial world, where a man cannot by any diligence inform himself of the degree of credit which ought to be given to the persons with whom he deals; in which cases he must apply to those whose sources of intelligence enable them to give that information. The law of prudence leads him to apply to them, and the law of morality ought to induce them to give the information required.—*Lord Kenyon*, C.J., Pasley *v.* Freeman (1789), 3 T. R. 51.
22. An universal custom is a law, and I know no distinction between *lex mercatoria* and *consuetudo mercatorum*.—*Holt*, C.J., Cramlington *v.* Evans (1680), Show. 4.
23. Convenience is the basis of mercantile law.—*Lord Mansfield*, Medcalf v. Hall (1782), 3 Doug. 115.
24. When a general usage has been judicially ascertained and established, it becomes a part of the law merchant, which Courts of justice are bound to know and recognise.—*Lord Campbell*, Brandao *v.* Barnett (1846), 12 Cl. & F. 805.
25. Nothing can fall within the custom of trade but what concerns trade. —*Heath*, J., Houghton *v.* Matthews (1803), 3 Bos. & Pull. 494.
26. The law merchant respects the religion of different people.—*Lord Ellenborough*, Lindo *v.* Unsworth (1811), 2 Camp. 603.
    See Religion, 1.
27. Persons in trade had better be very cautious how they add a fictitious name to their firm, for the purpose of gaining credit.—*Lord Ellenborough*, Guidon *v.* Robson (1809), 2 Camp. 304.
28. A proceeding may be perfectly legal and may yet be opposed to sound commercial principles.—*Lindley*, L.J., Verner *v.* General, &c. Trust (1894), L. R. 2 C. D. [1894], 264.
    See 29, *below;* Text Books, 4.
29. It has been uniformly laid down in this Court, as far back as we can remember, that good faith is the basis of all mercantile transactions. —*Buller*, J., Salomons *v.* Nissen (1788), 2 T. R. 681.
    See 20, 28, *above.*
30. Prudent business men in their dealings incur risk.—*Bacon*, V.-C., *In re* Godfrey, Godfrey *v.* Faulkner (1883), L. R. 23 C. D. 493.
    See also Miscellaneous, 35; Motives, 11.
31. Most businesses require liberal dealing.—*Bowen*, L.J., Hutton *v.* West Cork Railway Co. (1883), L. R. 23 C. D. 672.
32. I have always thought it highly injurious to the public that different rules should prevail in the different Courts on the same mercantile

Commerce—*continued.*

case. My opinion has been uniform on that subject. It sometimes indeed happens that in questions of real property Courts of law find themselves fettered with rules, from which they cannot depart, because they are fixed and established rules[1]; though equity may interpose, not to contradict, but to correct, the strict and rigid rules of law. But in mercantile questions no distinction ought to prevail. The mercantile law of this country is founded on principles of equity; and when once a rule is established in that Court as a rule of property, it ought to be adopted in a Court of law. For this reason Courts of law of late years have said that, even where the action is founded on a tort, they would discover some mode of defeating the plaintiff, unless his action were also founded on equity; and that though the property might on legal grounds be with the plaintiff, if there were any claim or charge by the defendant, they would not consider the retaining of the goods as a conversion.—*Buller*, J., Tooke *v.* Hollingworth (1793), 5 T. R. 229.

See 13, 14, *above;* COMPANIES, 4, 7; GAMBLING; JUDGES, 69; TEXT BOOKS, 4.

33. Paper currency, guarded by proper regulations and restrictions, is the life of commerce.—*Ashhurst*, J., Jordaine *v.* Lashbrooke (1798), 7 T. R. 605.

34. Whether a transaction be fair or fraudulent is often a question of law: it is the judgment of law upon facts and intents.—*Lord Mansfield*, Worseley *v.* Demattos (1758), 1 Burr. Part IV. 474.

See COMPANIES, 7.

Common Law.

1. We ourselves of the present age, chose our common law, and consented to the most ancient Acts of Parliament, for we lived in our ancestors 1,000 years ago, and those ancestors are still living in us.—*Sir R. Atkyns*, L.C.B., Trial of Sir Edw. Hales (1686), 11 How. St. Tr. n. p. 1204.

See STATUTES, 11, 14, 24.

2. It is difficult to struggle with the common law.—*Lord Ellenborough*, Kerr *v.* Willan (1817), 2 Starkie, 54.

3. Common law is common usage, and where there is no law there can be no transgression.—*Fortescue*, J., Rex *v.* Curl (1727), 2 Str. Rep. 790; 17 How. St. Tr. 159.

See PRECEDENTS, 10.

[1] *See* DISCRETION, 12, *and references there given.*

Common Law—*continued.*

4. The common law does not consist of particular cases decided upon particular facts: it consists of a number of principles, which are recognised as having existed during the whole time and course of the common law. The Judges cannot make new law by new decisions; they do not assume a power of that kind: they only endeavour to declare what the common law is and has been from the time when it first existed. But inasmuch as new circumstances, and new complications of fact, and even new facts, are constantly arising, the Judges are obliged to apply to them what they consider to have been the common law during the whole course of its existence, and therefore they seem to be laying down a new law, whereas they are merely applying old principles to a new state of facts.—*Brett*, M.R., Munster *v.* Lamb (1883), L. R. 11 Q. B. D. 599.

   See CASES, 9; JUDGES, 65; LAW, 55; STATUTES, 2.

5. I am not for stirring a single pebble of the common law.—*Wilmot*, L.C.J., Collins *v.* Blantern (1767), 2 Wils. 341.

   See MISCHIEF, 1 *n.*

6. There is no doubt whatever that as far as common law is concerned, the Courts in this country have been bound, most of them, by inflexible rules handed down in great measure from the time of the *Plantagenets*, and until certain modern statutes were passed there was no possibility of altering or improving them.—*Lord Penzance*, Cowan *v.* Duke of Buccleuch (1876), L. R. 2 Ap. Ca. 355.

   See STATUTES, 21, 22.

7. The common law, though not to be found in the written records of the realm, yet has been long well known. It is coeval with civilised society itself, and was formed from time to time by the wisdom of man. Good sense did not come with the Conquest, or at any other one time, but grew and increased from time to time with the wisdom of mankind.—*Lord Kenyon*, Rex *v.* Rusby (1801), Peake's N. P. Cases, 193.

8. The common law is the custom of the kingdom, and we are bound to know it, and must be all governed by it.—*North*, C.J., Whitebread's Case (1679), 8 How. St. Tr. 860.

   See EQUITY, 20.

9. The common law of England must direct the determination of a common law question. By common-law determinations we are bound; and to them we must always adhere: for, these are the proper constitutional declarations of the law of the land. They are so considered, even by the Court of Chancery itself. When any

Common Law—*continued.*

doubt arises in a cause of equity concerning a point of common law, it is usually referred to the determination of a Court of Common Law.[1] —*Yates*, J., Millar *v.* Taylor (1769), 4 Burr. Part IV. 2377.

See EQUITY, 2, 8, 12, 18, 20, 21; PRECEDENTS, 10.

10. Great attention and respect is undoubtedly due to the decisions of a Lord Chancellor: but they are not conclusive upon a Court of common law.[2]—*Yates*, J., Millar *v.* Taylor (1769), 4 Burr, Part IV. 2377.

See CHANCERY, 12, 13.

11. I shall always as far as I can by law endeavour to support the common law of the land and that excellent method of trial by juries, upon which all our lives, liberties and properties depend; and I shall endeavour as far as I can to prevent the encroachment of any jurisdiction whatever that proceeds by another law and another method of trial.[3]—*Willes*, L.C.J., Welles *v.* Trahern (1740), Willes' Rep. 241.

See JURISDICTION, 2; LAW, 18.

12. In a perfectly new case—a case altogether *primæ impressionis*—I think the Judges are bound to hold fast to the principles of the common law—to remember the maxim, "*Salus reipublicæ suprema lex*," and if the condition be really in principle against the public good, to pronounce it in their judgment void.—*Pollock*, C.B., Brownlow *v.* Egerton (1854), 23 L. J. Rep. Part 5 (N. S.) Ch. 382.

See also 9, *above;* CASES, 21; CONSTRUCTION, 19, 28; EQUITY, 8; JUDICIAL DECISIONS, 5; LAW, 2; LITIGATION, 2; PARLIAMENT, 13; POOR, 2.

Companies.

1. It appears to me that the atmosphere of the temple of Justice is polluted by the presence of such things as these companies.—*James*, L.J., Wilson *v.* Church (1879), L. R. 13 C. D. 44.
2. A company is perfectly responsible in every sense.—*Pearson*, J., Dyke *v.* Stephens (1885), L. R. 30 C. D. 191.
3. It is a very lamentable state of things, but I see no help for it. The money in such cases is gone—gone by mismanagement always, often by fraud and jobbery, and by the time that such questions come before the Courts it is a mere suggestion upon whom the loss shall fall. It is rarely borne by the persons whose ignorance, mismanagement, or

[1] The Court of Common Pleas is the lock and key of the common law.—*Co. 2 Inst.* 22.

[2] I here give my opinion as a Common Lawyer; not presuming to say what the Court of Chancery would do upon the same question.—*Id.* p. 2381.

[3] Whatever is by the common law, can only be affected by statute.—*Co. Litt.* 115 b.

Companies—*continued.*

dishonesty has caused the loss, as they are almost always without means, and have generally speculated as badly for themselves as for those who have put them in office. I see no help for it but in that which appears to be a plant of slow growth, caution on the part of persons liable to be affected by the ruin of these societies.—*Wills*, J., *In re* Companies Acts, *Ex parte* Watson (1888), L. R. 21 Q. B. 308.

4. In matters where a company is not restrained by Parliament they have a right to make reasonable regulations; but it will always be a question whether their regulations are reasonable or not.—*Lord Alvanley*, C.J., Eagleton *v.* East India Co. (1802), 3 Bos. and Pull. 67.
5. The office of director . . . a man ought not to fill without qualification.—*Lord Selborne*, Brown's Case (1873), L. R. 9 C. App. 102, 106.
6. The director is really a watch-dog, and the watch-dog has no right without the knowledge of his master to take a sop from a possible wolf.—*Bowen*, L.J., *In re* North Australian Territory Co. (1891), L. J. Rep. 61 C. D. 135.
7. In their desire to check dishonest and reckless trading Courts must be careful not to put tighter fetters on companies than the Legislature has authorised.—*Lindley*, J., Verner *v.* General and Commercial Investment Trust (1894), L. R. 2 Ch. 267.

   See COMMERCE, 14, 32.
8. I do not wish in any way to depart from the principle that a wrong-doing director, whether he be morally or legally wrong, should be made liable for the highest amount which could have been obtained from the property wrongly taken by him while it was in his hands.—*Webster*, M.R., Shaw *v.* Holland (1900), L. R. 2 C. D.; C. A. [1900], p. 310.

Compromise.

I think it is better, as it is a family-affair, to stand over for the chance of a compromise.[1]—*Lord Mansfield*, Strong *v.* Cummin (1758), 2 Burr. Part IV., p. 769.

See also CONSENT, 5, *and references there given;* CRIMINAL JUSTICE, 41, 42; EVIDENCE, 33; FAMILY; LITIGATION, 3; PARDON, 4.

[1] For the definition of "family," *see post*, heading FAMILY. In a case that came before him some years after, after recommending an arrangement between the parties which however failed in its result, Lord Mansfield thus expressed himself afterwards: "On its first coming before me, I strongly recommended it here. But if the parties will have it decided, we must give our opinion. Compassion will not, on the one hand, nor inconvenience on the other, be to decide, but the law: in which the difficulty will be principally from the inconvenience on both sides."—*Lord Mansfield*, Somerset *v.* Stewart (1772), Lofft. 17.

Consent.

1. You cannot consent to a thing unless you have knowledge of it.—*Jessel*, M.R., *Ex parte* Ford ; *In re* Cauchey (1876), L. R. 1 C. D. 528.
2. Parties cannot by consent give to the Court a power which it would not have without it.[1]—*Lord Esher*, M.R., *In re* Aylmer ; *Ex parte* Bischoffshiem (1887), L. J. 57 Q. B. 168.

   See also, antè, ADMISSION ; *suprà*, JURISDICTION, 9 ; RIGHTS, 3 ; STATUTES, 22.
3. I have very often had occasion to say, that acquiescence is founded on knowledge, and that a man cannot be said to acquiesce in a transaction if he is not proved to have had knowledge of it. I think that this principle requires to be attended to in all cases turning upon acquiescence.—*Sir G. J. Turner*, L.J., Stewart's Case (1866), L. R. 1 Ch. Ap. Ca. 587.

   See PRACTICE, 24.
4. It is not reasonable afterwards to allow the party to complain of that irregularity, of which, if he had availed himself in the first instance, all the expense would have been rendered unnecessary.[2]—*Lord Lyndhurst*, St. Victor *v.* Devereux (1845), 14 L. J. Ch. (N. S.) 246.

   See also IRREGULARITY.
5. If a client be present in Court, and stand by and see his solicitor enter into terms of an agreement, and makes no objection whatever to it, he is not at liberty afterwards to repudiate it.[3]—*Sir J. Romilly*, M.R., Swinfen *v.* Swinfen (1857), 24 Beav. 559.

   See also DILIGENCE, 2 ; EQUITY, 15, 33 ; PLEADINGS, 4, 5.

Construction.

1. When a general principle for the construction of an instrument is once laid down, the Court will not be restrained from making their own application of that principle, because there are cases in which it

[1] See *per Lord Campbell*, C.J., in Andrews *v.* Elliott, 5 E. & B. 503 ; Lawrence *v.* Wilcock, 11 A. & E. 941. See also Reg. *v.* Bertrand, L. R. 1 P. C. 520.

[2] *Consensus tollit errorem.*—2 *Inst.* 123. This decision shows that irregularities cannot be objected to after implied waiver of them by acquiescence.

[3] A man who does not speak when he ought, shall not be heard when he desires to speak.—*L'Amoureux* v. *Vischer*, 2 Cornstock (New York) R. 281. See also *per Lord Alverstone* in Neale *v.* Gordon Lennox (1902) : "I think it is now clearly established that counsel appearing for a party in an action is held out as having authority, and has full authority, as to all matters which relate to the conduct of the action and its settlement, and further that, notwithstanding a limit may have been placed upon the authority of counsel, the party for whom he appears is bound by such settlement unless the fact that the counsel's apparent authority had been limited was communicated to the other side."—*L. T. Rep.* Vol. 18, p. 392, and authorities there cited. On appeal affirmed, *T. L. R.*, Vol. 18, p. 791.

Construction—*continued.*

may have been applied in a different manner.[1]—*Lord Eldon*, C.J., Browning *v.* Wright (1799), 2 B. & P. 24.

2. One of the most sacred principles of law is, that a written instrument must be construed upon the face of it, and that no parol evidence can be used for the purpose of inserting any words not therein contained. —*Sir R. Malins*, V.-C., *In re* Sayer's Trusts (1868), L. R. 6 Eq. Ca. 321.

   See 31, *below;* WILL, 8.

3. Words having a distinct meaning must bear their primary legal import.[2]—*Sir W Page Wood*, V.-C., Alger *v.* Parrott (1866), L. R. 3 Eq. Ca. 330.

   See also STATUTES, 15; WILL, 8.

4. We can judge of the intent of the parties only by their words.— *Powell*, J., Idle *v.* Cooke (1704), 2 Raym. 1149.

   See 2, *above;* 15, 31, *below;* FRAUD, 14; WILL, 8, 14, *suprà.*

5. Nothing can be more mischievous than the attempt to wrest words from their proper and legal meaning only because those words are superfluous.—*Lord Selborne*, L.C., Giles *v.* Melsom (1873), L. R. 6 Eng. & Ir. Ap. 33.

   See 32, *below.*

6. One would wonder, when a word was in use two hundred years ago, that there should remain now any doubt what it is.—*Ashton*, J., Vallezjo *v.* Wheeler (1774), Lofft. 646.

   See also JUDICIAL DECISIONS, 20; LAW, 73.

7. An enactment for the favour and liberty of the subject ought to have a liberal construction.—*Maule*, J., Johnson *v.* Harris (1854), 3 W.R. 104.

   See LIBERTY OF THE SUBJECT, 2.

8. No Court ought to depart from the plain meaning of plain English words, unless coerced to do so by some very serious injustice, a hardship which would arise from a literal interpretation, for instance, where the legal interpretation would, in the opinion of the Court, operate so harshly that the Court would be driven to suppose that there must have been some clerical mistake in the language of the Act, or deed, or whatever may be under consideration.—*James*, L.J., *Ex parte* Rashleigh; *In re* Dalzell (1875), L. R. 2 C. D. 13.

   See also 2, 4, *above;* 31, 32, *below;* CASES, 15; FOREIGN LAW, 5; STATUTES, 3, 6, 8; WILL, 10.

[1] The same doctrine was laid down by Lord Kenyon in Lord Walpole *v.* Lord Cholmondeley, 7 T. R. 148.

[2] Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est: In the absence of ambiguity no exposition shall be made which is opposed to the express words of the instrument.—*Wing. Max.* 24.

Construction—*continued.*

9. Wherever a law is productive of tyranny, I shall ever give my consent to narrow the construction. — *Willes*, J., Jones *v.* Smart (1785), 1 T. R. 49.

See GAME; MOTIVES, 15.

10. I confess a law clearly penned shall have its force in cases it does reach, though it does not reach all cases; but where a law is penned, that it may be expounded one way or other, and there is a question of the meaning of it, it is more natural to believe it was meant in that way that is clear, and that reaches all cases that are in parity of reason, than in that way that has absurd consequences, both by including those which were not intended, and leaving out those which stand in the same degree.—*North*, C.J., Carter *v.* Crawley (1681), Sir Thos. Ray. Rep. 505.

See also 31, 32, *below;* MOTIVES, 15; STATUTES, 15; WILL, 8.

11. If in the vast majority of possible cases—in all of ordinary occurrence—the law is in no degree inconsistent or unreasonable, construed according to its plain words, it seems to me to be an untenable proposition, and unsupported by authority, to say that the construction may be varied in *every* case because there is one possible, but highly improbable one, in which the law would operate with great severity, and against our own notions of justice.[1]—*Parke*, B., Miller *v.* Salomons (1852), 7 Ex. Rep. 549.

See also STATUTES, 3, 7.

12. A *casus omissus* can in no case be supplied by a Court of law, for that would be to make laws.—*Buller*, J., Jones *v.* Smart (1785), 1 T. R. 52.

13. It is very mischievous for a Court to propound views of the law different from those taken by another Court of co-ordinate jurisdiction. —*Sir G. J. Turner*, L.J., *Ex parte* Fachiri; *In re* Fachiri (1867), L. R. 2 Ch. Ap. 372.

See JUDICIAL DECISIONS, 16, 17; JURISDICTION, 4, 12; LAW, 53.

14. Such construction is always to be made of a deed that all the words (if possible) agreeable to reason and conformable to law, may take effect according to the intent of the parties without rejecting of any, or by any construction to make them void.—*Lord Coke*, Shelley's Case (1581), 1 Co. 233, Part I. 95 b.

See 15, 29, 31, 32, *below.*

[1] This is in relation to the maxim *ad ea quæ frequentiùs accidunt jura adaptantur:* The laws are adapted to those cases which most frequently occur.—2 *Inst.* 137.

Laws are fitted "*ad ea quæ frequentiùs accidunt*," and not for rare and extraordinary events and accidents.—*Sir R. Atkyns*, L.C.B. See 11 How. St. Tr. 1208. Also *per Bramwell*, B., in Eastern Counties, &c. Companies *v.* Marriage (1860), 9 H. L. Cas. 52.

Construction—*continued.*

15. The rules laid down in respect of the construction of deeds are founded in law, reason, and common sense: That they shall operate according to the intention of the parties, if by law they may: And if they cannot operate in one form, they shall operate in that, which by law will effectuate the intention.—*Lord Mansfield*, C.J., Goodtitle *v.* Bailey (1777), 2 Cowp. 600.[1]

See 4, 8, 14, *above;* 29, *below;* WILL, 14.

16. It is the duty of Courts of Justice to give that construction which most fairly carries out the manifest purpose.—*Sir John Stuart*, V.-C., *In re* Warner and Powell's Arbitration (1866), L. R. 3 Eq. Ca. 266.

See also STATUTES, 7; WILL, 14.

17. Does not everybody see from hence, that you must first examine the law before you can apply the rule of construction? For the law must not be bent by the construction, but that must be adapted to the spirit and sense of the law.—*Camden*, L.C.J., Case of Seizure of Papers (1765), 19 How. St. Tr. 1060.

18. But surely it is a rule, both in law and equity, so to construe the whole deed or will, as that every clause should have its effect.—*Parker*, L.C., Butler *v.* Duncomb (1719), 1 P. Wms. 457.

See WILL, 7.

19. How far Judges may be, or ought to be, able to defeat a rule of law of which they disapprove, I cannot say. I think it is the duty of a Judge not to allow himself to be so influenced, but to construe the instrument in a proper way, to arrive at its meaning independently of the results, and then apply the law.—*Jessel*, M.R., Cunliffe *v.* Brancker (1876), L. R. 3 C. D. 399.

See CASES, 16, 21; COMMON LAW, 4; JUDGES, 1; PARLIAMENT, 13.

20. Definition, founded upon etymology, is not satisfactory, etymology being often in itself unsettled.—*Wood*, V.-C., Forbes *v.* Forbes (1854), 23 Law J. Rep. Part 2 (N. S.) Ch. 726.

See WILL, 8.

21. The words of a deed are to be construed like those of any other writing, according to the ordinary use and application of them.[2]—*Ld. Abinger*, C.B., Bain *v.* Cooper and another (1842), 9 M. & W. 708; 11 L. J. Ex. 327.

See also 32, *below;* WILL, 7, 8, 14.

[1] See also *per Willes*, C.J., in Smith *v.* Packhurst (1741), 3 Atk. 136; *per Lord Ellenborough*, C.J., in Barton *v.* Fitz-Gerald (1812), 15 East, 541; *per Ld.* Sicklemore *v.* Thistleton (1817), 6 M. & S. 12; *per Abbott*, C.J., in Evans *v.* Vaughan (1825), 4 B. & C. 266; *per Wilde*, C.J., Walker *v.* Giles (1849), 6 C. B. 702; 18 L. J. C. P. 330.

[2] Expressions used in particular cases

Construction—*continued.*

22. Very unequal would that interpretation be, which would construe the same words for the plaintiff according to the real substantial truth of the thing, in opposition to legal forms; and against the defendant according to legal notions and forms, contrary to real truth, more especially when the law, from the nature of it, ought to be taken liberally in favour of defendants.—*Lord Mansfield,* Johnson *v.* Smith (1759), 2 Burr. Part IV., p. 961.

23. If once we go upon niceties of construction, we shall not know where to stop. For one nicety is made a foundation for another; and that other for a third; and so on, without end.[1]—*Wilmot,* J., Rex *v.* Inhabitants of Caverswall (1758), Burrow (Settlement Cases), 465.

See JUDGES, 13.

24. The Court will always incline to lean against niceties in matters of variance. But where it is in the description of a statute or record, it is fatal.—*Lord Mansfield,* Rann *v.* Green (1776), 2 Cowp. 476.

25. When a person undertakes to explain his own meaning, we are not to extend the same by construction.—*Heath,* J., Lord Nelson *v.* Tucker (1802), 3 Bos. & Pull. 276.

See STATUTES, 19; WILL, 8, 15.

26. I should regret to place a narrowing construction upon rules intended to remove expense and delay.—*Lord Halsbury,* Jay *v.* Budd (1897) 66 L. J. Rep. (N. S.) 864.

See COSTS, 2; DELAY, 1.

27. We should not be too strict in construing instruments or contracts generally drawn up on the spur of the moment.—*Tindal,* C.J., Newbery v. Armstrong (1829), 3 M. & P. 513.

28. Where the law is known, and clear, though it be inequitable and inconvenient, the Judges must determine as the law is, without regarding the unequitableness or inconveniency, but where the law is doubtful and not clear, the Judges ought to interpret the law to be as is most consonant to equity, and least inconvenient.—*Vaughan,* L.C.J., Dixon *v.* Harrison (1669), Vaughan's Rep. 37, 38, Fortesc. 392, 393.

See also CASES, 14, 16, 21; COMMON LAW, 12; EQUITY, 10; JUDGES, 13, 34; JUDICIAL DECISIONS, 5; LAW, 22, 55, 71; PARLIAMENT 13; STATUTES, 3, 4.

29. I am bound to administer the law here according to the best

are to be understood with relation to the subject-matter then before the Court.—*Buller,* J., Moss *v.* Gallimore (1780), Dougl. 279.

[1] In questions of difficulty and nicety, Lord Coke says that arguments *ab inconvenienti* ought to have great weight.—*Lord Kenyon,* C.J., Sadgrove *v.* Kirby (1795), 6 T. R. 486. But *see also* JUDGES, *post,* 13.

Construction—*continued.*

construction that I can put upon the intent and meaning of the authorities applicable to the cases before me.—*Lord Langdale*, M.R., Carpmael *v.* Powis (1845), 9 Beav. 19.

See also 14, 15, 28, *above;* STATUTES, 14; WILL 9.

30. I have been long and deeply impressed with the rule, now, I believe, universally adopted, at least in the Courts of law in *Westminster Hall*, that in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther. This is laid down by Mr. Justice *Burton*, in a very excellent opinion, which is to be found in the case of *Warburton* v. *Loveland*.[1]—*Lord Wensleydale*, Grey and others *v.* Pearson (1857), 6 H. L. C. p. 106; 26 L. J. Ch. 481.

See also STATUTES, 6, 7, 17; WILL, 7, 16.

31. The golden rule of construction is, that words are to be construed according to their natural meaning,[2] unless such a construction would either render them senseless, or would be opposed to the general scope and intent of the instrument, or unless there be some cogent reason of convenience in favour of a different interpretation.—*Bramwell*, B., Fowell and another *v.* Franter and others (1864), 3 H. & C. 461; 34 L. J. Ex. 7.

See also 2, 4, 8, 29, *above;* 32, *below;* JUDGES, 13; WILL, 8, 15.

32. It has been a general rule for drawing deeds and other legal documents from the earliest times, which one is taught when one first becomes a pupil to a conveyancer, never to change the form of words unless you are going to change the meaning, and it would be as well if those who are engaged in the preparation of Acts of Parliament would bear in mind that that is the real principle of construction.—*Blackburn*, J., Hadley *v.* Perks (1866), L. R. 1 Q. B. 457.

See also 2, 5, 8, 10, 14, 21, 31, *above;* CONVEYANCE, 2; STATUTES, 2, 3, 14; WORDS, 5, 9.

[1] 1 Huds. & Brooke (Ir.) 648. See the same case in error in the House of Lords, with *Lord Chief Justice Tindal's* opinion on the same matter, delivered on behalf of all the Judges, 2 Dow & C. 493, and in the *Sussex Peerage Case*, 11 Clark & F. 143. See also Caledonian Railway Co. *v.* North British Railway Co. (1881), L. R. 6 App. Cas. 131, where Lord Blackburn quotes *Lord Wensleydale's* "golden rule for construing all written instruments." See also *per Jessel*, M.R., in *Ex parte* Walton; *In re* Levy (1881), L. R. 17 C. D. 750; 50 L. J. (N. S.) Ch. 659; *per Chitty*, J., in Spencer *v.* Metropolitan Board of Works (1882), L. R. 22 C. D. 148.

[2] As a Judge sitting here to interpret the rule, I must take it exactly as it is.—*Chitty*, J., Besley *v.* Besley (1888), L. R. 37 C. D. 650.

Contempt of Court.

1. The phrase "contempt of court" often misleads persons not lawyers, and causes them to misapprehend its meaning, and to suppose that a proceeding for contempt of court amounts to some process taken for the purpose of vindicating the personal dignity of the Judges, and protecting them from personal insults as individuals. Very often it happens that contempt is committed by a personal attack on a Judge or an insult offered to him; but as far as their dignity as individuals is concerned, it is of very subordinate importance compared with the vindication of the dignity of the Court itself; and there would be scarcely a case, I think, in which any Judge would consider that, as far as his personal dignity goes, it would be worth while to take any steps.—*Blackburn*, J., Skipworth's Case (1873), L. R. 9 Q. B. Ca. 232.

   See 10, *below;* JUDGES, 19, 75; MORALS, 1.

2. The object of the discipline enforced by the Court in case of contempt of court is not to vindicate the dignity of the Court or the person of the Judge, but to prevent undue interference with the administration of justice.—*Bowen*, L.J., Hellmore *v.* Smith (2) (1886), L. R. 35 C. D. 455.

   See below, 6; ADMINISTRATION OF JUSTICE, 21; COURTS, 6; JURY, 20.

3. There are three different sorts of contempt. One kind of contempt is scandalizing the Court itself. There may be likewise a contempt of this Court, in abusing parties who are concerned in causes here. There may be also a contempt of this Court, in prejudicing mankind against persons before the cause is heard. There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.—*Lord Hardwicke*, Case of Printer of *St. James's Evening Post* (1742), 2 Atk. 471.

   See 10, *below;* ADMINISTRATION OF JUSTICE, 28; HUSBAND AND WIFE, 5.

4. *Vus nus dirrez en un autre manere comment yl est plus procheyn heyr, ou vous demurrz sanz manger et beyre jekes demyn matyn enclos.* (You shall tell us in another way how he was next heir, or you shall remain shut up without eating or drinking until to-morrow morning.) —*Roubury*, J., Pleas in the Common Bench (1293), Y. B. 21 & 22 Ed. I., p. 272.

   See 8, *below;* JURY, 20.

5. It seems to me that this jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched, and exercised, if I may say so, with the greatest reluctance

Contempt of Court—*continued.*

and the greatest anxiety on the part of Judges to see whether there is no other mode which is not open to the objection of arbitrariness, and which can be brought to bear upon the subject.—*Jessel*, M.R., *In re* Clements, Clements *v.* Erlanger (1877), 46 L. J. Ch. 383.

See below, 10; JUSTICE, 6.

6. The law has armed the High Court of Justice with the power, and imposed on it the duty of preventing *brevi manu* and by summary proceedings any attempt to interfere with the administration of justice. It is on that ground, and not on any exaggerated notion of the dignity of individuals that insults to Judges are not allowed. —*Bowen*, L.J., *In re* Johnson (1887), L. R. 20 Q. B. D. 74.

See 2, *above.*

7. It is truly remarked that all the particular instances of contempts it would be endless to enumerate.—*Williams*, J., Miller *v.* Knox (1838), 4 Bing. N. C. 589.

8. From the earliest period of our history this authority has been exercised.[1] The Year-books record instances of such commitments.—*Best*, J., R. *v.* Davison (1821), 4 B. & A. 340.

See 4, *above.*

9. Committals for contempt of Court are ordinarily in cases where some contempt *ex facie* of the Court has been committed, or for comments on cases pending in the Courts. However, there can be no doubt that there is a third head of contempt of Court by the publication of scandal matter of the Court itself. . . . Committal for contempt of Court is a weapon to be used sparingly, and always with reference to the interests of the administration of justice. Hence, when a trial has taken place and the case is over the Judge or the jury are given over to criticism. Committals for contempt of Court by scandalising the Court itself have become obsolete in this country. Courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them.—*Lord Morris*, McLeod *v.* St. Aubyn (1899), L. R. App. Cas. [1899], p. 561.

See ADMINISTRATION OF JUSTICE, 20; HUSBAND AND WIFE, 5; JUDGES, 18, 82; JUDICIAL PROCEEDINGS, 1, 7, 11.

10. There are many ways of obstructing the Court. Endeavours are not wanting either to disturb the Judge or to influence the jury, or to keep back or pervert the testimony of witnesses, or by other methods, according to the emergency of the occasion, to obstruct the course of justice. These powers are given to the Judges to keep the course of justice

[1] *I.e.*, the power that a Judge of a Court of record has to fine or imprison for contempt.

Contempt of Court—*continued.*

free[1]: powers of great importance to society, for by the exercise of them law and order prevail; those who are interested in wrong are shown that the law is irresistible. It is this obstruction which is called in law contempt, and it has nothing to do with the personal feelings of the Judge, and no Judge would allow his personal feelings to have any weight in the matter. According to my experience, the personal feelings of the Judges have never had the slightest influence in the exercise of these powers entrusted to them for the purpose of supporting the dignity of their important office; and so far as my observation goes, they have been uniformly exercised for the good of the people.—*Erle*, C.J., *Ex parte* Fernandez (1861), L. J. C. P. 332.

See 1, 3, 5, *above;* COURTS, 3, 4; JURY 19.

11. The privilege of committing for contempt is inherent in every deliberative body invested with authority by the Constitution.[2]—*Lord Denman*, C.J., Stockdale *v.* Hansard (1837), 3 St. Tr. (N. S.) 854.

See 10, *above.*

Contract.

1. Judicial decision on one contract can rarely help us to the understanding of another.—*Lord O'Hagan*, Rhodes *v.* Forwood (1876), L. R. 1 Ap. Ca. 275.
2. There is a great principle which I think ought to be adhered to by this Court, and by every Court where it can possibly do so; that is to say, that a man shall abide by his contracts, and that a man's contracts should be enforced as against him.—*Romer*, J., Biggs *v.* Hoddinott, Hoddinott *v.* Biggs (1898), L. R. 2 C. D. [1898], p. 313.

See also 6, *below;* EQUITY, 38; FRAUD, 14; MISCELLANEOUS, 11; TORT, 16; TRUTH, 8.

3. As to the hardships upon foreigners, if they enter into contracts in *England*, and apply to our Courts of judicature to enforce a performance of them, they must submit themselves to be judged by the laws of this kingdom, and to our exposition of them.—*Lord Mansfield*, Pray *v.* Edie (1786), T. R. 315.

See FOREIGN LAW, 4; LAW, 24; TORT, 1.

4. It is to be remembered that contracts in restraint of trade are in themselves, if nothing more appears to show them reasonable, bad in the eye of the law.—*Tindal*, C.J., Horner *v.* Graves (1831), 7 Bing, 744.

[1] *See* 3, *above.*

[2] Compare Beaumont *v.* Barrett, 1 Moo. P. C. 59; Kielby *v.* Carson, 4 Moo. P. C. 63; Fenton *v.* Hampton, 11 Moo. P. C. 347; Doyle *v.* Falconer, L. R. 1 P. C. 328.

Contract—*continued.*

5. A contract requires two parties to it, and a man in one character can, with difficulty, contract with himself in another character.—*Sir John Romilly*, M.R., Collinson *v.* Lister (1855), 20 Beav. 370; 24 L.J. Ch. 766.
6. It seems to me that whenever circumstances arise in the ordinary business of life in which, if two persons were ordinarily honest and careful, the one of them would make a promise to the other, it may properly be inferred that both of them understood that such a promise was given and accepted.—*Lord Esher*, M.R., *Ex parte* Ford (1885), L. R. 16 Q. B. D. 307; 55 L. J. Q. B. 407.

See 2, *above*; COMMERCE, 4; TRUTH, 4.

Conveyance.

1. There is no magical meaning in the word "conveyance"; it denotes an instrument which carries from one person to another an interest in land. Now, an instrument giving to a person a charge upon land, gives him an interest in the land—if he has a mortgage already, it gives him a further interest.[1]—*Lord Cairns*, L.C., Credland *v.* Potter (1874), L. R. 10 Ch. Ap. 12.

See WORDS, 1.

2. The difficulty I really feel is the danger of doing anything which may imperil what has been going on for centuries among conveyancers. Conveyancers have not always stated exactly the truth upon the face of their deeds. No doubt at the present day greater care is taken, but there are some forms which are known, and which are in common use. —*Chitty*, J., Carritt *v.* Real and Personal Advance Company (1889), L. R. 42 Ch. 272.

See also CONSTRUCTION, 32; STATUTES, 2, 3; WILL, 4.

Corporations.

1. We ought not to encourage vexatious prosecutions, which tend to throw corporations into confusion.—*Lord Mansfield*, Rex *v.* Wardroper (1766), 4 Burr. Part IV. 1965.

See PROCESS, 2; TORT, 19.

2. The Court are bound to consider all the circumstances of the case, before they disturb the peace and quiet of any corporation.—*Lord Mansfield*, King *v.* Stacey (1785), 1 T. R. 6.

[1] This ruling as to the definition of the word "conveyance" arose from the question whether an instrument not under seal giving a charge on the equity of an estate was a conveyance within the meaning of the West Riding Registry Act (2 & 3 Anne, c. 4).

Corporations—*continued.*

3. That corporations are the creatures of the Crown must be universally admitted.—*Lord Kenyon*, C.J., King *v.* Ginever (1796), 6 T. R. 735.
4. The situation the Lord Mayor holds is the first officer of the first city in the world in point of commerce and riches, and everything that can constitute the magnificence of a city. He is a judicial officer, and a municipal officer too, and from these combined characters there are duties incumbent upon him, which by all the ties that can bind a man to the discharge of duty, he is bound to discharge. It stands at the head of his duties, next after protecting the religion which binds us to God, to govern that civil policy which binds government together, and prevents us from being a state of anarchy and confusion. —*Lord Kenyon*, Eaton's Case (1793), 22 How. St. Tr. 820.
5. We ought, as far as we can by law, to support the government of all societies and corporations, especially this of the city of London; and if the mayor and aldermen should not have power to punish offenders in a summary way, then farewell the government of the city.—*Holt*, C.J., Clark's Case (1696), 5 Mod. Rep. 320.
6. Corporations cannot commit treason, nor be outlawed, nor excommunicate, for they have no souls.[1]—*Coke*, Case of Sutton's Hospital (1612), 5 Rep. 303; 10 Rep. 32 b.

[1] Lord Coke gravely informs us that corporations cannot be excommunicated, because they have no souls, and they appear to be as destitute of every feeling as if they had also no bowels. It is certain that one consequence of the division of responsibility which attends the union of a great number of individuals is, that the collective body is guilty of things, of which few of the persons composing it but would shrink from committing; there is, in truth, but one point through which they are vulnerable, and that is the keyhole of the cash box. A good many cases might be cited in support of this proposition: Thus, in a contract to carry goods and passengers, corporate bodies may be held responsible even through the negligence of their servants.

"Cities are immortal."—*Grotius*, De Jure Belli et Pacis, lib. 2, cap. 9. See also 1st Inst. fol. 9 b. 3 Coke, 60 a.; 2 Bulstr. 233; 21 Edw. VI. f. 13.

"When it is said that a corporation is immortal, we are to understand nothing more than that it is capable of an indefinite duration, and the authorities cited to prove its immortality, do not warrant the conclusion drawn from them. If a man give lands, says Sir Edward Coke, to a mayor and commonalty, or other body aggregate, consisting of many persons capable, without naming successors, the law construes it to be a fee simple, because, in judgment of law, they never die: where the sense is plain that these natural persons, though capable to take in their natural capacities jointly, which the law would adjudge an estate for lives: yet the grant being made to them in their corporate name, they take in that capacity, and the grant is not determinable on the death of any of the individuals, but continues as long as the corporation continues. In support of the idea of the immortality of corporations, a passage is also cited from Grotius; which, however, when fairly considered, is so far from justifying the conclusion drawn from it, that it proceeds on the supposition that they may cease to exist."—*Kyd on Corporations*, 17.

A corporation can have no legal existence out of the boundaries of the sovereignty by which it is created.—*Taney*, C.J., Bank of Augusta *v.* Earle, 13 Peters' Sup. Court Rep. (U. S.) 588.

Corporations—*continued.*

7. It is a fiction, a shade, a nonentity, but a reality for legal purposes. A corporation aggregate is only *in abstracto*—it is invisible, immortal, and rests only in intendment and consideration of the law.—*Coke*, Case of Sutton's Hospital (1612), 5 Rep. 303; 10 Rep. 32 b.

See 6, *n.*, *above.*

Costs.

1. A Judge ought to be severe in awarding costs when he finds that expenses have been incurred through a wrongful suppression of material documents.—*Thesiger*, L.J., Jones *v.* Monte Video Gas Co. (1880), L. R. 5 Q. B. 559.
2. It is unconscionable in a defendant, to take advantage of the *apices litigandi*, to turn a plaintiff round, and make him pay costs where his demand is just. Against such objections every possible presumption ought to be made, which ingenuity can suggest. How disgraceful then would it be to the administration of justice to allow *Chicane* to obstruct *Right;* by the help of a legal fiction contrary to the help of the fact!—*Lord Mansfield*, Morris *v.* Pugh (1761), 3 Burr. Part IV. 1243.

See also CONSTRUCTION, 26; DELAY, 1; DISCRETION, 11, 15; PLEADINGS, 10.

3. I will be no party to paying out of charity property costs which are not properly payable out of it.—*Kay*, J., *In re* St. Stephen, Coleman Street; *In re* St. Mary the Virgin, Aldermanbury (1888), L. R. 39 C. D. 507.
4. By the rule of law, the King neither receives or pays costs.[1]—*Lord Mansfield*, King *v.* Jenkinson (1785), T. R. 83.

See below, 5.

5. The Crown was always an unequal match for the subjects: but if the weight of costs were thrown into the scale, this would become such an addition as would make its prosecutions heavier than they would be

[1] See the Author's treatise on the law and privileges relating to the Attorney-General, &c., pp. 73, 98, 103, n. Also for this principle of the common law, see Bl. Com. III. 402; Att.-Gen. *v.* Shillibeer, 4 Ex. 606; Burton, Office of Pleas (Exchequer Practice) 248; Chitty, Prerogatives of the Crown, 310; Manning, Practice of the Exchequer, 69; The Queen *v.* Beadle, 7 Ell. & Bl. 492; West on Extents, 227. The maxim on the point is that "Roy n'est lie per ascun Statute, si il ne soit expressement nosme": The King is not bound by any statute, if he be not expressly named to be so bound.—*Jenk. Cent.* 307; *Wing. Max.* 1. By the statute 18 & 19 Vict. c. 90, ss. 1, 2, the subject of costs in all legal proceedings by or on behalf of the Crown in matters relating to the public revenue, were placed upon the same footing as in actions between subject and subject. But "on the other hand, as incidental to departmental administration there must often be litigation which does not directly affect any prerogative of the Crown and as to which no good reason can be assigned for the denial of costs to the successful party."—*Per Lord Alverstone* in Rex *v.* Archbishop of Canterbury and another (1902), T. L. R. Vol. 18, 388, and authorities there collected.

Costs—*continued.*

able to bear.—*Parker*, C.J., Reg. *v.* Ballivos, &c. de Bewdley (1712), 1 P. Wms. 226.

See 4, *above;* FORFEITURE.

Counsel.

1. A gentleman of Lincoln's-inn.[1]—*Holt*, C.J., Butler's Case (1699), 13 How. St. Tr. 1259.
2. A gentleman at the Bar.—*Lord Mansfield*, Windham *v.* Chetwynd (1757), 1 Burr. Part IV. 427.

   See below, 6, 15; ESQUIRE, 2.
3. No counsel in the world that understand themselves, can argue anything against what has been often settled and always practised.—*Holt*, C.J., Parkyn's Case (1696), 13 How. St. Tr. 134.

   See 10, *below;* PRECEDENTS, 12.
4. If any whimsical notions are put into you, by some enthusiastic counsel, the Court is not to take notice of their crotchets.—*Jefferies*, C.J., Hayes' Case (1684), 10 How. St. Tr. 314.
5. In a common case, it is the usual course for the counsel to take the memorandums in his hand, for the cross-examination.—*Eyre*, L.C.J., Trial of Thomas Hardy (1794), 24 How. St. Tr. 824.
6. It is impossible the cause can go on, unless the gentlemen at the bar will a little understand one another, and by mutual forbearance, assist one another; you are a little too apt to break out, and I think

[1] Remark of the Judge on the witness replying that he belonged to the Honourable Society of Lincoln's Inn on the question, "What profession are you of?" Members of the Bar were formerly designated by the Inn to which they belonged. The following is another later example in reference to the Honourable Society of Lincoln's Inn: "I was prevented by a sudden fit of illness from attending; but I learnt from a gentleman of *Lincoln's Inn*, that the order was confirmed."—*King* v. *Waller* (1772), Lofft. 50. *See also* as to a "Gentleman of Gray's Inn," COURTS, 4, *n.*, *suprà*. "Gentlemen of the Robe," or "of the Long Robe," or "Long Robe" simply, was the familiar term by which the members of the various Inns of Court, *i.e.*, "the Four Bars" were generally known in former times. This is frequently seen in the old Books and Parliamentary Debates which also speak of matters referred to a "Committee of the Long Robe."—See *Proceedings against Thomas Earl of Danby* (1678—1685), 11 How. St. Tr. 770, 771, 791. See also the following insulting remark of Jefferies to counsel in *Sacheverell's Case* (1684): "You are a gentleman of the long robe and should have known better." (10 How. St. Tr. 91.) "As for *gentlemen*," says Sir Thomas Smith, "they be made good cheap in this kingdom; for whosoever studieth the laws of the realm, who studieth in the Universities, who professeth the liberal sciences, and (to be short) who can live idly, and without manual labour, and will bear the port, charge, and countenance of a gentleman, he shall be called master, and shall be taken for a gentleman."—*Commonw. of Eng.*, b. I, c. 20; *Steph. Com.*, Vol. 2 (9th ed.), 619. Also stated on the same page that to esquires, may be added barrister - at - law. *See also* heading ESQUIRE, I, 2, 3, *suprà;* R. *v.* Brough, 1 Wils. 244. It is stated in Blount's Law Dict. and Glossary, that barristers were named *esquires* in the Acts for poll-money.

Counsel—*continued.*

there has been a little inclination sometimes to observe more upon that than the occasion calls for.—*Eyre*, L.C.J., Hardy's Case (1794), 24 How. St. Tr. 688.

7. It is fit they should speak what they can for the advantage of their client.—*Walcot*, J., Hampden's Case (1684), 9 How. St. Tr. 1104.

See JUDGES, 4.

8. It has been always the practice heretofore, that when the Court have delivered their opinion, the counsel should sit down and not dispute it any further.[1]—*Jefferies*, C.J., Case of Titus Oates (1685), 10 How. St. Tr. 1186.

See LIBERTY OF THE SUBJECT, 1.

9. Consider a little how you treat the Court; the objection hath been solemnly taken in this Court, argued and adjudged by this Court, and now you come to arraign that judgment that was then given.—*Pratt*, C.J., Layer's Case (1722), 16 How. St. Tr. 313.

10. The point now before us is a settled case, and therefore there is no need to enter into arguments about it.—*Denison*, J., Rex *v.* Jarvis (1756), 1 Burr. Part IV. 154.

See 3, *above.*

11. There is usually a decency about counsel which prevents them from pressing that to a conclusion which can never be concluded.—*Gibbs*, C.J., Tomkins and others *v.* Willshear (1813), 5 Taunton, 431.

See also PRACTICE, 22, 23.

12. Counsel are frequently induced, and they are justified in taking the most favourable view of their clients' case; and it is not fair to pass over any piece of evidence they find difficult to deal with, provided they cite, fairly and correctly, those parts of the evidence they comment upon.—*Lord Kenyon*, Case of Earl of Thanet and others (1799), 27 How. St. Tr. 940.

See also 14, *below;* CRIMINAL JUSTICE, 1; JUDGES, 51; NONSUIT, *n.*; OPENING SPEECH, 4; PRACTICE, 22.

13. A counsel's position is one of the utmost difficulty. He is not to speak of that which he knows; he is not called upon to consider whether the facts with which he is dealing are true or false. What he has to do, is to argue as best he can, without degrading himself,

[1] "And let not the counsel at the bar chop with the Judge, nor wind himself into the handling of the cause anew, after the Judge hath declared his sentence." —*Bacon*, "Essay on Judicature."

Absurdum est affirmare (*re judicata*) *credendum esse non judici:* It is absurd to say, after judgment, that any one else than the Judge should be hearkened to. —12 *Co.* 25. *See also antè*, ADMINISTRATION OF JUSTICE, 21, *n.*

Counsel—*continued.*

in order to maintain the proposition which will carry with it either the protection or the remedy which he desires for his client. If amidst the difficulties of his position he were to be called upon during the heat of his argument to consider whether what he says is true or false, whether what he says is relevant or irrelevant, he would have his mind so embarrassed that he could not do the duty which he is called upon to perform. For, more than a Judge, infinitely more than a witness, he wants protection on the ground of benefit to the public. The rule of law is that what is said in the course of the administration of the law is privileged; and the reason of that rule covers a counsel even more than a Judge or a witness.[1]—*Brett*, M.R., Munster *v.* Lamb (1833), L. R. 11 Q. B. 603.

See also ADMINISTRATION OF JUSTICE, 34, 35; EVIDENCE, 29; JUDGES, 47, 51; JUDICIAL PROCEEDINGS, 13; OPENING SPEECH, 3; PRACTICE, 22.

14. It is expected you should do your best for those you are assigned for, as it is expected in any other case, that you do your duty for your client.—*Holt*, C.J., Rookwood's Case (1696), 13 How. St. Tr. 154.

See 12, *above;* JUDGES, 4.

15. The Court is greatly obliged to the gentlemen of the Bar who have spoke on the subject; and by whose care and abilities so much has been effected, that the rule of decision will be reduced to a very easy compass. I cannot omit to express particular happiness in seeing young men, just called to the Bar, have been able so much to profit by their reading.—*Lord Mansfield*, Somerset *v.* Stewart (1772), Lofft. 18; *id.* The Negro Case, 20 How. St. Tr. 80.

See also post, LAW 1, *n.*; *note to* LAW REPORTS, 3, *suprà.*

16. No man has a higher sense of the importance of the rights and privileges of counsel in discharge of their arduous and important duties, and I should regret if they had not that privilege, not for their sake only, but for the sake of the whole community.—*Cockburn*, C.J., *Ex parte* Pater (1864), 9 Cox, C. C. 553.

See MISCELLANEOUS, 7.

17. You need not cite cases that are familiar.[2]—*Sir F. Pollock*, C.B., Reg. *v.* Baldry (1852), 5 Cox, C. C. 525.

[1] See 3 *Bl. Com.* 125; Odgers, Libel and Slander (2nd ed.), 187; Folkard, Law of Slander and Libel (5th ed.), 192; 3 Broom, *Com.* 132.

An overspeaking Judge is a no well-timed cymbal. It is no grace to a Judge first to find that which he might have heard in due time from the Bar, or to show quickness of conceit in cutting off evidence or counsel too short, or to prevent (anticipate) information by questions, though pertinent.—*Essay of Judicature. See further*, Bacon's advice to Mr. Justice Hutton, *post*, JUDGE, 26, *n.*; JURY, 15.

[2] "You need not cite cases: 'Tis a principle."—*Lord Mansfield's* remark to

Counsel—*continued.*

18. I remember Lord Eldon saying to counsel, "You have told us how far the cases have gone, will you now tell us where they are to stop?" I think it is now time that we should say where the cases are to stop. —*Pollock*, C.B., Phillips *v.* Briard (1856), 4 W. R. 487.

See also CASES, 2, 6.

19. A man's rights are to be determined by the Court, not by his attorney or counsel. It is for want of remembering this that foolish people object to lawyers that they will advocate a case against their own opinions. A client is entitled to say to his counsel, I want your advocacy, not your judgment; I prefer that of the Court.—*Bramwell*, B., Johnson *v.* Emerson (1871), L. R. 6 Ex. 367.

See 27, *below.*

20. When counsel addresses an argument on the ground of natural justice to a Court of law, he addresses it to the wrong tribunal. It may be a good argument for inducing the legislature to alter the law; but in a Court of law all that we can deal with is the law of the land as we find it.—*North*, J., *In re* Gregson (1887), L. J. 57 C. D. 223.

See JUDGES, 34.

21. First settle what the case is, before you argue it.—*Wright*, L.C.J., Trial of the Seven Bishops (1688), 12 How. St. Tr. 342.

22. Don't you foist in a proposition which is not allowed.[1]—*Lord Mansfield*, Crosser *v.* Miles (1774), Lofft. 595.

See also CASES, 6; JUDGES, 70; PLEADINGS, 12.

23. It seems to me that the argument of the defendant's counsel blows hot and cold at the same time.[2]—*Buller*, J., I'Anson *v.* Stuart (1787), 1 T. R. 753.

See PLEADINGS, 9.

counsel in the course of the argument in Morgan *v.* Jones (1773), Lofft. 165. See also *per Lord Alverstone* in Rex *v.* Archbishop of Canterbury and another (1902), T. L. R. Vol. 18, 388.

[1] The recent rejoinder of Mr. Justice Grantham to counsel for foisting a preposterous argument upon the Court will serve to illustrate the point, when his lordship observed that "a grosser perversion of English justice it is impossible to imagine, and I should indeed be sorry if, under any circumstances, it could be proved to be English law."—*Burrows* v. *Rhodes* [1899], L. R. 1 Q. B. D. 823.

[2] . . . . This would be blowing hot and cold.—*Lawrence*, J., Berkeley Peerage Case (1811), 4 Camp. 412. *Allegans contraria non est audiendus* (*Jenk. Cent.* 16): "He is not to be heard who alleges things contradictory to each other." This elementary rule of logic expresses, in technical language, the saying that a man shall not be permitted to "blow hot and cold" with reference to the same transaction, or insist, at different times, on the truth of each of two conflicting allegations, according to the promptings of his private interest. Says the Satyr, if you have gotten a trick of blowing hot and cold out of the same mouth, I've e'en done with ye.—*L'Estrange.*

"Hot and cold were in one body fixt;
And soft with hard, and light with heavy mixt."—*Dryden.*

Counsel—*continued.*

24. It is the duty of all Courts to keep counsel to the points before them.—*Pemberton*, L.C.J., Fitzharris' Case (1681), 8 How. St. Tr. 296.

25. I wish to uphold counsel in the exercise of their discretion.—*Kekewich*, J., *In re* Somerset; Somerset *v.* Earl Poulett (1893), L. R. [1894], 1 Ch. 249.

Compare EVIDENCE, 13 *et seq.*, *infrà*; JUDGES, 4.

26. I cannot allow that the counsel is the agent of the party.—*Best*, C.J., Colledge *v.* Horn (1825), 3 Bing. 121.

See 27, *below.*

27. I always said, I will be my client's advocate, not his agent. To hire himself to any particular course, is a position in which no member of the profession ought to place himself.—*Pollock*, C.B., Swinfen *v.* Lord Chelmsford (1860), L. T. Rep. Vol. 2 (N. S.) 413.

See 19, 26, *above.*

Court Leet.

These Courts were very properly adapted to the customs, manners, genius and policy of a people upon their first settlement: but, like all other human jurisdictions, vary in the course and progress of time, as the Government and manners of a people take a different turn, and fall under different circumstances.[1]—*Lord Mansfield*, Colebrooke *v.* Elliott (1765) 3 Burr. Part IV., p. 1863.

See LAW, 3.

Courts.

1. It was said by a very learned Judge, Lord *Macclesfield*, towards the beginning of this century that the most effectual way of removing land marks would be by innovating on the rules of evidence; and so I say.[2] I have been in this profession more than forty years, and have practised both in Courts of law and equity; and if it had fallen to my lot to form a system of jurisprudence, whether or not I should have thought it advisable to establish two different Courts with different jurisdictions, and governed by different rules, it is not necessary to say. But, influenced as I am by certain prejudices that have become inveterate with those who comply with the systems they found established, I find that in these Courts proceeding by different rules a certain combined system of jurisprudence has been framed most

[1] For definition of Court Leet, consult *Bl. Com.* IV. 318. This Court has fallen into desuetude and its business has gradually devolved upon the quarter sessions. It is expressly kept up by sect. 40 of the Sheriffs Act, 1887.

[2] *See* Bacon's advice to Mr. Justice Hutton, *suprà*, JUDGES, 26, *n.*

Courts—*continued.*

beneficial to the people of this country, and which I hope I may be indulged in supposing has never yet been equalled in any other country on earth.[1] Our Courts of law only consider legal rights: our Courts of equity have other rules, by which they sometimes supersede those legal rules, and in so doing they act most beneficially for the subject. We all know that, if the Courts of law were to take into their consideration all the jurisdiction belonging to Courts of equity, many bad consequences would ensue. To mention only the single instance of legacies being left to women who may have married inadvertently: if a Court of law could entertain an action for a legacy, the husband would recover it, and the wife might be left destitute: but if it be necessary in such a case to go into equity, that Court will not suffer the husband alone to reap the fruits of the legacy given to the wife; for one of its rules is that he who asks equity must do equity,[2] and in such a case they will compel the husband to make a provision for the wife before they will suffer him to get the money. I exemplify the propriety of keeping the jurisdictions and rules of the different Courts distinct by one out of a multitude of cases that might be adduced. . . . One of the rules of a Court of equity is that they cannot decree against the oath of the party himself on the evidence of one witness alone without other circumstances: but when the point is doubtful, they send it to be tried at law, directing that the answer of the party shall be read on the trial; so they may order that a party shall not set up a legal term on the trial, or that the plaintiff himself shall be examined; and when the issue comes from a Court of equity with any of these directions the Courts of law comply with the terms on which it is so directed to be tried. By these means the ends of justice are attained, without making any of the stubborn rules of law stoop to what is supposed to be the substantial justice of each particular case; and it is wiser so to act than to leave it to the Judges of the law to relax from those certain and established rules by which they are sworn to decide.—*Lord Kenyon*, C.J., Bauerman *v.* Radenius (1798), 7 T. R. 667.

See also ADMINISTRATION OF JUSTICE, 6; LAW, 23; MAGISTRATES, 4; PRECEDENTS, 3, *n.*

[1] It is unnecessary to show what passes in England, a country as famed for justice, and other great qualifications, as any other country: justice is there administered in such a manner as to exalt it above the other countries of the earth. It is our duty to administer justice in such a way as to give satisfaction to all parties.—*Earl of Clonwell*, C.J., Jackson's Case (1795), 25 How. St. Tr. 798.

[2] *See post*, EQUITY, 12.

Courts—*continued.*

2. It will make a greater heat in the city not to grant this (writ) than otherwise.—*Powis*, J., R. *v.* Sir Gilbert Heathcot (1711), Fortesc. 293.

   See JUDGES, 9; MAGISTRATES, 4; PROCESS, 2.

3. So long as Courts of justice remain Courts of justice there must be decency maintained.[1]—*Bayley*, J., Trial of Hunt and others (1820), 1 St. Tr. (N. S.) 382.

   See MAGISTRATES, 6.

4. Let us have no breaking of the peace in Court.[2]—*Pemberton*, L.C.J., Trial of Lord Grey and others (1682), 9 How. St. Tr. 186.

   See also ADMINISTRATION OF JUSTICE, 20; CONTEMPT, 9; JUDGES, 73, 76.

5. An English Court cannot judge by the light of nature.—*Bowen*, L.J., Hyman *v.* Helm (1883), L. R. 24 C. D. 544.

6. Courts do not exist for the sake of discipline, but for the sake of

[1] Strong expressions in Courts of justice, according to present views, must be repressed; and the fastidiousness of people's ears is not to be allowed to form their rule of conduct. It is curious to notice the change which a few years has produced in this respect. Mr. Hayward, Q.C., in his "Biographical and Critical Essays," says (p. 140): "During the first quarter of the century the best bred people swore. . . . Mr. Justice Best (the first Lord Wynford) during the trial of Carlisle for blasphemy, audibly exclaimed to a brother Judge, 'I'll be d—d to h—l if I sit here to hear the Christian religion abused.' [His words, as reported, will, however, be found slightly different under the heading CHRISTIANITY, 1, *supra*.] Lord Eldon was in the habit of revising drafts of bills during prayers in the House of Lords. He had just risen from his knees when, in reply to an ironical comment of Lord Grey, he said, 'D—n it, my lord, you'd do the same if you were as hard worked as I am.'" Swift's line may thus be adopted in its integrity: "Never mention Hell to ears polite."

"The Master of the Rolls is always amusing, but he rarely indulges in such homely wit as he did on a recent occasion when a junior before him cited the Law Reports as '2 Q. B. D.' 'That is not the way you should address us,' said Lord Esher. The learned gentleman protested that he merely meant to use the brief and ordinary formula for the second volume of the Queen's Bench Division Reports. 'I might as well,' retorted his lordship, 'say to you, 'U. B. D.'"—*Pall Mall Gazette; id.* L. T., Vol. 102, April 24, 1897, p. 576.

[2] "I hope we are now past that time of day that humming and hissing shall be used in Courts of justice; but I would fain know that fellow that dare to hum or hiss while I sit here; I will assure him, be he who he will, I will lay him by the heels and make an example of him. Indeed, I knew the time when causes were to be carried according as the mobile hissed or hummed; and I do not question but they have as good a will to it now. Come, Mr. Ward, pray let us have none of your fragrancies, and fine rhetorical flowers, to take the people with."—*Jefferies*, L.C.J., Pritchard *v.* Papillon (1684), 10 How. St. Tr. 337. "Pray let us have no laughing, it is not decent."—*Wright*, L.C.J., Trial of the Seven Bishops (1688), 12 How. St. Tr. 344. At the trial of the Seven Bishops, great disorder prevailed, especially after their acquittal. The Solicitor-General seeing several persons shouting, moved that they might be committed, "whereupon a gentleman of Gray's Inn was laid hold of," but was soon after discharged. After the shouting was over, the Lord Chief Justice (Wright) "reproving the gentleman," said: "I am glad as you can be that my lords the bishops are acquitted, but your manner of rejoicing here in Court is indecent; you might rejoice in your chambers, or elsewhere, but not here."—*Id.* 431. *See also antè*, COUNSEL, 1, *n.*

Courts—*continued.*

deciding matters in controversy.—*Bowen*, L.J., Cropper *v.* Smith (1884), L. R. 26 C. D. 710.

See CONTEMPT OF COURT, 2.

7. The criminal suit is open to every one, the civil suit to every one showing an interest.—*Sir William Scott*, Turner *v.* Meyers (1804), 1 Hagg. Con. 415, *n.*

See EQUITY, 36.

8. The Court is to be guided by equity and good conscience, and the best evidence.—*Lord Hobhouse*, Moses *v.* Parker (1896), L. R. Ap. Ca. [1896], p. 248.

See EQUITY, 33.

9. It is not necessary in a Court of law to inquire into the modes of proceeding by which Courts of equity are guided.—*Lord Loughborough*, Rondeau *v.* Wyatt (1792), 2 Hen. Black. 68.

See 14, *below.*

10. The Courts can take no notice of anything but what comes judicially before them.—*Yates*, J., Rex *v.* Wilkes (1769), 4 Burr. Part IV. 2533.

See also 14, *below;* ADMINISTRATION OF JUSTICE, 3, 4.

11. The Courts of law are not provided at the public expense, and were not intended by those who so provided them, for the settlement of any but differences which do arise in the ordinary course of business.—*Alderson*, B., Brownlow *v.* Egerton (1854) (H. of L.), 23 L. J. Rep. Part 5 (N. S.), Chan. 365.

See MORALS, 3, *and references therefrom.*

12. I think Courts of justice must always act upon the theory of very great probability being sufficient.—*Sir G. Jessel*, M.R., Pattisson *v.* Gilford (1874), L. R. 18 Eq. Ca. 264.

13. Every Court is the guardian of its own records, and master of its own practice.—*Tindal*, C.J., Scales *v.* Cheese (1844) 12 M. & W. 687.

See also CHANCERY, 5; JUDICIAL DECISIONS, 26; PRACTICE, 2.

14. By common courtesy, credit is given to Courts which have pronounced the law, that they have proceeded legally.—*Williams*, J., *In re* Carus Wilson (1845), 6 St. Tr. (N. S.) 192.

See also 10, *above;* ADMINISTRATION OF JUSTICE, 3; CASES, 15; CHANCERY, 10; DOCTRINE, 4; EVIDENCE, 10; LAW, 37, 59.

Covenant.

After a hard frost a man might wake in the morning and find he was breaking a covenant.—*Maule*, J., Stokes *v.* Grissell (1854), 2 W. R. 466.

Criminal Justice.

1. There is no difference between civil and criminal cases as to evidence; whatever is proper evidence in one case is in the other. With respect to criminal cases, if there is any doubt, one would lean in favour of a defendant, for the reason mentioned by my lord yesterday,[1] because that is not to be set right afterwards.—*Laurence*, J., Stone's Case (1796), 25 How. St. Tr. 1314.

   See also 5, *below;* COUNSEL, 12; EVIDENCE, 1, 10.

2. Judges should be, and I believe generally are, careful not to allow proof of other acts of the prisoner besides those the subject of the indictment to be given, unless those acts have a clear bearing on some issue raised by the indictment.—*Channell*, J., Reg. *v.* Ollis (1900), L. R. 2 Q. B. D. [1900], p. 782.

   See 16, 37, *below;* ADMINISTRATION OF JUSTICE, 5; EVIDENCE, 20; REPUTATION; WITNESS, 2.

3. The natural leaning of our minds is in favour of prisoners; and in the mild manner in which the laws of this country are executed, it has rather been a subject of complaint by some that the Judges have given way too easily to mere formal objections[2] on behalf of prisoners, and have been too ready on slight grounds to make favourable representations of their cases. Lord *Hale* himself, one of the greatest and best men who ever sat in judgment, considered this extreme facility as a great blemish, owing to which more offenders escaped than by the manifestation of their innocence.[3] We must, however, take care not to carry this disposition too far, lest we loosen the bands of society, which is kept together by the hope of reward, and the fear

[1] "Really I wish I was more acquainted than I am, with the course of criminal jurisdiction—if the question had never been decided, I should have extreme doubts upon it, and those extreme doubts which I should have would lead me in a criminal case to do otherwise than I should do in a civil case—in every civil case [I speak in the hearing of a great many professional gentlemen] wherever I have serious doubts, I follow the doctrine which I have collected to be laid down by Lord Hardwicke; I receive the evidence, giving the jury the best instruction I can upon the effect of it; and I do it in the case of civil proceedings, without running the risk of doing any hurt, because if I receive it improperly, a season will come when the Court can correct my error."—*Lord Kenyon*, *id.* 1272. *See also per Serjt. Best*, Trial of Lord Melville (1806), 29 How. St. Tr. 1750; *and* APPEALS, 4, *supra, and references there given.*

[2] *See post*, PLEADINGS, 12.

[3] *Lord Kenyon* again expressed himself very much to the same effect some time after in the case of King *v.* Airey, reported in 2 East, 34: "I once before had occasion to refer to the opinion of a most eminent Judge, who was a great Crown lawyer, upon the subject, I mean *Lord Hale**; who even in his time lamented the too great strictness which had been required in indictments, and which had grown to be a blemish and inconvenience in the law; and observed that more offenders escaped by the over easy ear given to exceptions in indictments than by their own innocence."

* *See* 2 Hale, 193.

Criminal Justice—*continued.*

of punishment. It has been always considered, that the Judges in our foreign possessions abroad were not bound by the rules of proceeding in our Courts here. Their laws are often altogether distinct from our own. Such is the case in *India* and other places. On appeals to the Privy Council from our colonies, no formal objections are attended to, if the substance of the matter or the *corpus delicti* sufficiently appear to enable them to get at the truth and justice of the case.—*Lord Kenyon*, C.J., King *v.* Suddis (1800), 1 East, 314.

See also 30, 32, 37, *below;* LAW, 54; PLEADINGS, 12; PUNISHMENT, 1, 4.

4. It is the pride of our laws to labour more for the acquittal than the conviction of the accused, however black the allegations of offence.—*George*, B., Redmond's Case (1803), 28 How. St. Tr. 1313.

See also 7, 16, 30, 37, *below;* CHARACTER, 2, 3; LAW, 48; MISCELLANEOUS, 18; WITNESS, 2.

5. It has been solemnly decided that there is no difference between the rules of evidence in civil and criminal cases. If the rules of evidence prescribe the best course to get at truth, they must be and are the same in all cases and in all civilized countries.—*Best*, J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 113.

See also 1, *above, and references there given.*

6. We must follow the old authorities and precedents in criminal matters.—*Lord Coleridge*, C.J., Queen *v.* Sowerby (1894), L. R. 2 Q. B. D. [1894], p. 175.

7. God forbid that the defendant should not be allowed the benefit of every advantage he is entitled to by law.—*Lord Mansfield*, Case of John Wilkes (1763), 4 Burr. Part IV., p. 2539.

See also 4, *above;* ADMINISTRATION OF JUSTICE, 1, 19; EVIDENCE, 21; TORT, 2.

8. In a criminal case I can presume nothing.—*Lord Ellenborough*, King *v.* Brett (1806), 5 Esp. 261.

See EVIDENCE, 1, 10.

9. In criminal cases you always begin by proving the *corpus delicti*, and then connect the prisoner with it.—*Pollock*, C.B., Queen *v.* Bernard (1858), 8 St. Tr. (N. S.) 922.

10. It is abominable to convict a man behind his back.—*Holt*, C.J., The Queen *v.* Dyer (1703), 6 Mod. 41.

11. The laws of God and man both give the party an opportunity to make his defence, if he has any.[1] I remember to have heard it

[1] Out of thine own mouth will I judge thee.—*Luke* xix., 22.

Criminal Justice—*continued.*

observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon *Adam* before he was called upon to make his defence. *Adam* (says God), where art thou? Hast thou eaten of the tree, whereof I commanded thee that thou shouldest not eat? And the same question was put to *Eve* also.[1]—*Fortescue*, J., The King *v.* Chancellor, &c. of the University of Cambridge (1723), 1 Str. 566.

12. Justice requires that a party should be duly summoned and fully heard before he is condemned.[2]—*Lord Kenyon*, C.J., King *v.* Stone (1801), 1 East, 649.

13. Without resorting to authorities in a plain case, the common sense and feeling of mankind, the voice of nature, reason, and revelation, all concur in this plain rule, *That no man is to be condemned unheard;* and consequently no trial ought to proceed to the condemnation of a man who by the providence of God is rendered totally incapable of speaking for himself, or of instructing others to speak for him.—*Foster*, J., Sir John Wedderburn's Case (1746), Foster's Cr. Ca. 34, 35.

See below, 14, 15.

14. I take it to be contrary to the first principles of English jurisprudence and English law that a man should be condemned unheard.—*Brett*, J., Lovering *v.* Dawson, No. 1 (1875), L. R. 10 C. P. 722.

See above, 13; *below*, 15.

15. It is necessary to the administration of justice that every person who is accused of a crime should have an opportunity of being heard

[1] *Genesis* iii. 9, 11.

When Paul stood before the pagan governor, and the Jews required judgment against him, the governor replied: It is not the manner of the Romans to condemn any man, before he and his accusers be brought face to face, to justify their accusation. See *Acts* xxv., 16.

Audi alteram partem (hear the other side).—*Broom's M.* 113; *In re* Pollard, L. R. 2 P. C. 106.

The principle is to be found recorded in the earliest books extant, and even a Judge like Jefferies is found to have expressed himself on the subject, as seen in the following case (*Trial of the Lady Alice Lisle for High Treason* (1685), 11 How. St. Tr. 351):—

"*Lisle:* My lord, I hope I shall not be condemned without being heard.

"*L.C.J.* (Lord Jefferies): No, God forbid, Mrs. Lisle; that was a sort of practice in your husband's time; you know very well what I mean: But God be thanked, it is not so now; the King's Courts of law never condemn without hearing."

It may be mentioned that the prisoner was the widow of John Lisle, who had been one of the judges of King Charles the First. Hence the reference to her husband showing off Jefferies in his atrocious method of reviling both prisoner and witnesses, which was never more apparent than in this case.

[2] See *S. C.* 8 East, 164; Willis *v.* Gipps, 5 Moo. P. C. 379; Smith *v.* Queen, L. R. Ap. Cas. 614; Capel *v.* Child, 2 C. & J. 558; Reg. *v.* Archbishop of Canterbury, 1 E. & E. 559.

Criminal Justice—*continued.*

in his defence against the charge of which he is accused.[1]—*Lord Kenyon*, C.J., The King *v.* Justices of Surrey (1794), 6 T. R. 78.

See below, 31; ADMINISTRATION OF JUSTICE, 5; JUDICIAL PROCEEDINGS, 7.

16. It is of the essence of justice not to decide against any one on grounds which are not charged against him, and as to which he has not had an opportunity of offering explanations or calling evidence.—*Lord Blackburn*, O'Rorke *v.* Bolingbroke (1877), L. R. 2 Ap. Ca. 834.

See 2, *above;* 19, *below;* ADMINISTRATION OF JUSTICE, 5; WITNESS, 2.

17. It is certain that natural justice requires that no man shall be condemned without notice.—*Fortescue*, J., R. *v.* Cleg (1735), 1 Str. 475.

18. There must be an opportunity given to every person before judgment is passed upon him of being heard in his defence, and it is essential that the charge should always be intimated to the supposed delinquent.—*Lord Campbell*, C.J., Bartlett *v.* Kirwood (1853), 23 L. J. Rep. (N. S.) Part 1, Q. B. p. 13.

Compare ADMINISTRATION OF JUSTICE, 1; *see also* 15, 16, 17, *above;* PROPERTY, 14.

19. Every man ought to have the fullest opportunity of establishing his innocence if he can.—*Hawkins*, J., Queen *v.* Dennis (1894), L. R. 2 Q. B. D. [1894], p. 480.

See 18, *above.*

20. Would to God you were innocent, that is the worst wish I wish you.—*Jefferies*, L.C.J., Hampden's Case (1684), 9 How. St. Tr. 1104.

21. The word "innocent" hath a double acceptation, innocent in respect of malice, and innocent in respect of the fact.—*Bridgman*, L.C.B., Lilburn's Case (1660), 5 How. St. Tr. 1205.

22. God forbid that the rights of the innocent should be lost and destroyed by the offence of individuals.—*Wilmot*, J., Mayor, &c. of Colchester *v.* Seaber (1765), 3 Burr. Part IV. 1871.

See 51, *below.*

23. As anger does not become a Judge, so neither doth pity; for one is the mark of a foolish woman, as the other is of a passionate man.—*Scroggs*, C.J., King *v.* Johnson (1794), 2 Shower, 5.

See MISCELLANEOUS, 54; TRUTH, 13.

24. If his sorrow was honest and sincere it may go very far in mitigation.—*Lord Mansfield*, The King *v.* Williams (1774), Lofft. 763.

See CHARACTER, 8.

[1] It is an invariable maxim in our law that no man shall be punished before he has had an opportunity of being heard.—*Id.* Rex *v.* Benn and another (1795), 6 T. R. 198.

Criminal Justice—*continued.*

25. This Court will always know to temper mercy with justice where there is room for it.[1]—*Ashhurst*, J., Holt's Case (1793), 22 How. St. Tr. 1237.

See ADMINISTRATION OF JUSTICE, 32; LAW, 48; PARDON, 3; PUNISHMENT, 5.

26. We sit here in this Court of Queen's Bench under the same obligation as the Queen holds her Crown, to administer justice with mercy according to the laws of the land.—*Pennefather*, L.C.J., Queen *v.* O'Connell and others (1843), 5 St. Tr. (N. S.) p. 592.

See PARLIAMENT, 6; PUNISHMENT, 5.

27. In all cases whatever it is usual for either plaintiff or defendant to speak by their counsel. You are assisted by a most able counsel, and you would not be guilty of any impropriety if what you wish to offer to the Court were first suggested to him, for he would then determine of the propriety of suggesting it to the Court.—*Barrington*, J., Case of the Dean of St. Asaph (1783), 21 How. St. Tr. 876.

28. You have a right to discourse with your counsel, but you must do it in such a manner as the jury may not hear.[2]—*Pratt*, C.J., Layer's Case (1722), 16 How. St. Tr. 177.

29. Wise and practical regulations must contemplate and provide for the occasional oversights and inadvertences which, by the law of chances, are certain to happen among the thousands of criminal trials before all sorts of jurisdictions every year in England.—*Byles*, J., Reg. *v.* Mellor (1858), 5 Cox, C. C. 482.

Compare ADMINISTRATION OF JUSTICE, 15. *See also* CHANCERY, 10; LAW, 62; MISTAKES; PARLIAMENT, 3, *n.*; STATUTES, 2.

30. I agree with Mr. Pitt Taylor that, in many of the cases, justice and common sense have been sacrificed,[3] but not, as it appears to me, at

[1] Every human tribunal ought to take care to administer justice, as we look hereafter to have justice administered to ourselves.—*The Hon. Thomas Erskine*, Stockdale's Case (1789), 22 How. St. Tr. 283.

[2] As to the right of a prisoner to address the Court after a verdict of acquittal, see the following :—

"You will understand one thing, and that is, that having been acquitted, you have *no right* to address one word either to the Court or the jury. At the same time, I do not wish to hold you strictly to that right ; but conduct yourself properly, and I will not stop you."—*Eyre*, L.C.J., Tooke's Case (1794), 25 How. St. Tr. 746.

In *Crossfield's Case* (1796), 26 How. St. Tr. 167, the same Judge informed the prisoner after counsel had been heard in his defence, that he had "also a right to be heard in his own person, if he thought fit to offer anything to the jury." On this point, see also *per Stephen*, J., Reg. *v.* Doherty (1887), 16 Cox, C. C. 306, where the same privilege was allowed a prisoner ; Criminal Evidence Act, 1898 ; Rex. *v.* Pope, 18 T. L. R. 717 ; and cases collected in Warburton's L. C. in Cr. Law, 243—246, ed. 1892. And *contrà* see *per Richards*, L.C.B., in Edmonds and others (1821), 1 St. Tr. (N. S.) 863 : "We cannot hear the client and counsel too, it is against all rules."

[3] Justice and common sense seem to have been sacrificed on the shrine of mercy.—*Taylor on Evid.* 597.

Criminal Justice—*continued.*

the shrine of mercy—rather at the shrine of guilt, because I regard a wrongful acquittal as unmerciful to the prisoner, whose real interests are sacrificed by his escape, as well as to society.[1]—*Erle*, J., Reg. *v.* Baldry (1852), 5 Cox, C. C. 531.

See 3, *above;* JUDGES, 74; PUNISHMENT, 4.

31. The law of England is anxious for the interests of persons against whom charges may be made. If a man commits a crime, there is a legal and constitutional mode by which that crime may be brought into discussion. He is liable to be tried, but though his crime may be as great and as aggravated as possible, he ought to have a full, fair, dispassionate, and temperate investigation of his conduct at the time of trial.—*Bayley*, J., Trial of Sir Francis Burdett (1820), 1 St. Tr. (N. S.) 162.

Compare 15, 16, *above. See also* JUDGES, 80; TRIAL FOR LIFE, 1.

32. It is better that ten guilty persons escape than that one innocent suffer.[2]—*Sir Wm. Blackstone* (1765), Com. Bk. 4, Ch. 27, Vol. IV. p. 358.

See also 3, *above;* 35, *below;* EVIDENCE, 30, *n.*

33. Felony stands on a very different ground from misdemeanour; and the assertion that a misdemeanour can be tried in that county alone wherein any part of it was committed, appears to me to have been built upon a mistake of the true ground and reason of the doctrine in felony.—*Abbott*, C.J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 147.

34. The true ground of the doctrine in felony is this: if a felony be compounded of two distinct acts, one of which takes place in one county and the other in another county, the concurrence of both being necessary to constitute the felony, the party may not be triable in either, because, *ex hypothesi*, there is no felony committed in either. —*Abbott*, C.J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 148

[1] *Minatur innocentibus, qui pareit nocentibus:* He threatens the innocent who spares the guilty.—4 *Co.* 45.

[2] I am of the same opinion with the Roman who, in the case of Catiline, declared he had rather ten guilty persons should escape than one innocent should suffer.—*Sir Ed. Seymour*, counsel for prisoner: Sir John Fenwick's Case (1696), 13 How. St. Tr. 565.

See this maxim contested in Archdeacon Paley's *Principles of Moral and Political Philosophy*, Vol. 2, p. 310, and vindicated by Sir Samuel Romilly in *Criminal Law of England*, &c., note D. "Unless civil institutions ensure protection to the innocent, all the confidence which mankind should have in them would be lost."—*Boswell's Life of Johnson*, Vol. 2, p. 475, 1st ed.

The escape of one delinquent can never produce so much harm to the community as may arise from the infraction of a rule. upon which the purity of public justice and the existence of civil liberty essentially depend.—*Archdeacon Paley, Principles of Moral and Political Philosophy*, Bk. 6, c. 8.

Criminal Justice—*continued.*

35. The criminal law ought to be reasonable and intelligible.—*Martin*, B., The Queen *v.* Middleton (1873), L. R. 2 Crown Ca. Res. 57.

See 49, *below;* JUDGES, 48.

36. There are frequently things sworn to which are so improbable that one does not believe them. It is one of the commonest things in the world in a criminal case to have the most positive oral evidence given on oath to establish a matter which neither the jury nor the Judge can believe, although it is sworn to.—*Lord Blackburn*, Gardner *v.* Gardner (1877), L. R. 2 App. Ca. 738.

See ADMINISTRATION OF JUSTICE, 15; AFFIDAVIT, 2; EVIDENCE, 2, 22.

37. In a criminal proceeding the question is not alone whether substantial justice has been done, but whether justice has been done according to law. All proceedings *in pœnam* are, it need scarcely be observed, *strictissimi juris;* nor should it be forgotten that the formalities of law, though here and there they may lead to the escape of an offender, are intended on the whole to insure the safe administration of justice and the protection of innocence, and must be observed. A party accused has the right to insist on them as matter of right, of which he cannot be deprived against his will; and the Judge must see that they are followed.—*Cockburn*, C.J., Martin *v.* Mackonochie (1878), L. R. 3 Q. B. 775.

See 2, 3, 31, 32, *above;* JUDGES, 52; LAW, 54.

38. Running away from justice, must always be considered an evidence of guilt.—*Clerk*, L.J., Muir's Case (1793), 23 How. St. Tr. 230.

39. Flight, in criminal cases, is itself a crime. If an innocent man flies for treason or felony, he forfeits all his goods and chattels. Outlawry, in a capital case, is as a conviction for the crime: And many men who never were tried have been executed upon the outlawry.—*Lord Mansfield*, Rex *v.* Wilkes (1769), 4 Burr. Part IV., p. 2549.

40. Flight, or an escape from arrest for felony, is an acknowledgment of guilt . . . every man, who is accused, is bound to submit himself to the judgment of the law; and, whether it be a trespass, or whether it be a felony with which he is charged, it may, with truth, be said of him who shrinks from trial—*facinus fatetur qui judicium fugit.*[1]—*Day*, J., Johnson's Case (1805), 29 How. St. Tr. 192.

See LAW, 37.

41. The duty to prosecute, or not to prosecute, is a social and not a legal duty, which depends on the circumstances of each case. It cannot be said that it is a moral duty to prosecute in all cases. The matter

[1] He who flees judgment confesses his guilt.—3 *Inst.* 14.

Criminal Justice—*continued.*

depends on considerations, which vary according to each case. But the person who has to act is bound morally to be influenced by no indirect motive. He is morally bound to bring a fair and honest mind to the consideration and to exercise his decision from a sense of duty to himself and others.—*Bowen*, L.J., Jones *v.* Merionethshire Permanent Benefit Building Society (1891), L. R. 1 C. D. [1892], p. 183.

See 42 *below. See also* COMPROMISE; EVIDENCE, 33; MONEY, 1; PARDON, 4; REWARD.

42. It is to the interest of the public that the suppression of a prosecution should not be made matter of private bargain.—*Erle*, C.J., Clubb *v.* Hutson (1865), L. R. 18 C. B. Rep. (N. S.) 417.

See 41, *above;* LITIGATION, 3.

43. If people with the very best intentions carry on prosecutions that are oppressive, the end may not always perhaps sanctify the means.—*Lord Kenyon*, Williams' Case (1797), 26 How. St. Tr. 704.

See JURY, 30; MISCELLANEOUS, 56; NECESSITY, 2.

44. Shall we indict one man for making a fool of another?—*Holt*, C.J., Reg. *v.* Jones (1703), 2 Raym. 1013.

45. I do not approve of *indicting*, where there is another remedy: it carries the appearance of oppression.—*Lord Mansfield*, Rex v. Boyall (1759), 2 Burr. Part IV. 834.

See PROCESS, 2.

46. You shall have the laws of England, although you refuse to own them in not holding up your hand; for the holding up of the hand hath been used as a part of the law of England these five hundred years.[1]—*Keble*, C.J., Lilburne's Case (1649), 4 How. St. Tr. 1330.

[1] *Lord Keble:* The holding up of your hand, we will tell you what it means and signifies in law: the calling the party to hold up his hand at the bar, is no more but for the special notice that the party is the man enquired for, or called on; and therefore if you be Mr. John Lilburne, and be the man that we charge, do but say that you are the man, and that you are there, and it shall suffice.

Jermin, J.: You have desired to have the right of the law of England; and yet you do question a fundamental thing, that hath been always used in case of criminal offences. . . . There be two reasons why holding up the hand hath been used always: First, for notice that those that are called for capital and criminal offences, that they hold up their hands, is to declare that they are the men. My lord hath given you this one reason already; which, I say, is, that he be notified by holding up the hand to all the beholders, and those that be present, and hear him that he is the man. But besides this, there is more in it; that is thus: *A pure, innocent hand does set forth a clear unspotted heart; that so the heart and hand together might betoken innocency.* And therefore hold up your hand, that thereby you may declare you have a pure, innocent heart. If you refuse to do this, you do wilfully deprive yourself of the benefit of one of the main proceedings and customs of the laws of England. Now for this, do what you think fit.—*Lilburne's Case, id.* p. 1289, 1290.

When the prisoner is brought to the bar, he is called upon by name to hold up his hand: which though it may seem a

Criminal Justice—*continued.*

47. The law is plain, that you are positively to answer, guilty, or not guilty, which you please.—*Keble*, C.J., Lilburne's Case (1649), 4 How. St. Tr. 1293.

48. He that doth refuse to put himself upon his legal trial of God and the Country, is a mute in law; and therefore you must plead guilty or not guilty. Let his language be what it will, he is a mute in law.[1]—*Bridgman*, L.C.B., Axtel's Case (1660), 5 How. St. Tr. 1007.

See 49, *below*; TRIAL FOR LIFE, 1.

49. Truly I think it one of the most reasonable laws in the world, that a man be tried by his county, by the neighbourhood; and it has given ground to a good English proverb: "*He that has an ill-name, is half hanged.*"[2] A man's repute among his neighbours goes a great way in this matter, when his neighbours shall say they never knew ill by him.—*Keating*, L.C.J., Case of John Price and others (1689), 12 How. St. Tr. 626.

See 35, 48, *n.*, *above*; LIBEL, 6; MISCELLANEOUS, 18; TRIAL FOR LIFE, 1.

50. Nothing could be of worse consequence, than that an officer of the Court should combine with a criminal to frustrate the sentence of the

trifling circumstance, yet is of this importance, that by the holding up of his hand *constat de persona*, and he owns himself to be of that name by which he is called.—2 *Hale*, P. C. 219.

However, it is not an indispensable ceremony; for, being calculated merely for the purpose of identifying the person, any other acknowledgment will answer the purpose as well: therefore, if the prisoner obstinately and contemptuously refuses to hold up his hand, but confesses he is the person named, it is fully sufficient.—*Raym.* 408. See also *Hawk.* P. C., Bk. 2, c. 28, s. 2.

[1] To be tried by God and your Country, no more is meant by it than thus: by God, as God is everywhere present, yea in all Conrts of justice, and sits and knows all things that are acted, said, and done: the other part of it, by your Country, that is, by your County or neighbourhood; the Country is called Patria, because your neighbour and your equals, which you are willing to put yourself upon the trial of. By force of that word, the Country, a jury of the neighbourhood for trial of you are summoned.—*Jermin*, J., Lilburne's Case (1649), 4 How. St. Tr. 1295. Sacramental importance was attached for centuries to the speaking of these words. If a prisoner would not say them, and even if he wilfully omitted either "by God" or "by my country," he was said to stand mute, and a jury was sworn to say whether he stood "mute of malice" or "mute by the visitation of God." If they found him mute by the visitation of God the trial proceeded. But if they found him mute of malice, if he was accused of treason or misdemeanour, he was taken to have pleaded guilty, and was dealt with accordingly. If he was accused of felony, he was condemned, after much exhortation, to the *peine forte et dure*, that is, to be stretched, naked on his back, and to have "iron laid upon him as much as he could bear and more," and so to continue, fed upon bad bread and stagnant water on alternate days, till he either pleaded or died. This strange rule was in force till the year 1772, when it was abolished by 12 Geo. III. c. 20, which made standing mute in cases of felony equivalent to a conviction. In 1827 it was enacted, by 7 & 8 Geo. IV. c. 28, s. 2, that in such cases a plea of not guilty should be entered for the person accused.—*Pike*, "Hist. of Crime," II., 195, 283; *Steph.* "Hist. of Crim. Law," I. 298.

[2] "He that hath an ill name is half hang'd ye know."—*J. Heywood*, "Proverbs," Bk. II. c. vi.

Criminal Justice—*continued.*

Court.—*Wilmot*, J., Rex *v.* Beardmore (1759), 2 Burr. Part IV., p. 175.

See also PARLIAMENT, 11; PRACTICE, 9; PUBLIC SERVANT, 10.

51. I think that a man who has been guilty of an indictable offence ought not to have the assistance of the law to recover the profits of his crime; and that whether his agents be innocent or criminal, privy or not privy, his claim against those agents is equally inadmissible in a Court of law.[1]—*Rooke*, J., Farmer *v.* Russell (1798), 2 Bos. & Pull. 301.

See also 22, *above*; FRAUD, 33; LAW, 6; PUBLIC POLICY, 7; RELIEF, 2.

52. There are certain irregularities which are not the subject of criminal law. But when the criminal law happens to be auxiliary to the law of morality, I do not feel any inclination to explain it away.—*Lord Kenyon*, C.J., Young and others *v.* The King (1789), 3 T. R. 102.

See ADMINISTRATION OF JUSTICE, 15, *and references therefrom*; IRREGULARITY.

53. A conviction is in the nature of a verdict and judgment, and therefore it must be precise and certain.—*Lord Kenyon*, C.J., King *v.* Harris (1797), 7 T. R. 238.

54. A conviction must be good in all its parts; the information must be supported by the evidence, and the judgment must be supported by both.—*Per Cur.*, King *v.* Salomons (1786), 1 T. R. 251.

55. I take it that the judgment is an essential point in every conviction, let the punishment be fixed or not.—*Lord Kenyon*, C.J., King *v.* Harris (1797), 7 T. R. 239.

Crown.

These Courts are not presumed to be the best acquainted with the rights and prerogatives of the Crown: in regard to such matters, we must look differently and respectfully to other authorities.—*Sir John Nicholl*, Goods of King George III. (1822), 1 St. Tr. (N. S.) 1283.

See PARLIAMENT, 2, 13, *and references therefrom.*

Damages.

1. Damages are designed not only as a satisfaction to the injured person, but likewise as a punishment to the guilty, to deter from any such proceeding for the future, and as a proof of the detestation of the jury

[1] See also *per Lord Lyndhurst*, C.B., Colburn *v.* Patmore (1834), 1 C. M. & R. 83, quoted by Grantham, J., Burrows *v.* Rhodes (1899), L. R. 1 Q. B. D. [1899], p. 824.

Damages—*continued.*

to the action itself.—*Lord Mansfield*, Case of John Wilkes (1764) 19 How. St. Tr. 1167; Lofft.'s Rep. 19.

See PUNISHMENT, 3; REWARD; TORT, 15.

2. I wish to know, in a case where a man disregards every principle which actuates the conduct of gentlemen, what is to restrain him except large damages?[1]—*Gibbs*, C.J., Merest *v.* Harvey (1813), 5 Taunton, 443.

See PUBLIC SERVANTS, 3.

3. Every injury imports a damage, though it does not cost the party one farthing, and it is impossible to prove the contrary; for a damage is not merely pecuniary, but an injury imports a damage, when a man is hereby hindered of his right. As in an action for slanderous words, though a man does not lose a penny by reason of the speaking them, yet he shall have an action. So if a man give another a cuff on the ear, though it cost him nothing, no, not so much as a little *diachylon*, yet he shall have his action, for it is a personal injury.—*Holt*, C.J., Ashby *v.* White (1703), Ld. Raym. 955.

4. To excuse himself from damage, must say, was ready always and at all times.—*Holt*, C.J., Horn *v.* Lewins (1698), Fortesc. 235.

5. Nominal damages are in effect, only a peg to hang costs on.—*Maule*, J., Beaumont *v.* Greathead (1846), 3 D. & L. 636.

6. "Nominal damages," is a technical phrase which means that you have negatived anything like real damage, but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you a right to the verdict or judgment because your legal right has been infringed. But the term "nominal damages" does not mean small damages. The extent to which a person has a right to recover what is called by the compendious phrase damages, but may be also represented as compensation for the use of something that belongs to him, depends upon a variety of circumstances, and it certainly does not in the smallest degree suggest that because they are small they are necessarily nominal damages. Of course, the whole region of inquiry into damages, is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless, it is remitted to the jury, or those who stand

[1] *Vita reipublicæ pax, et animus libertas et libertatis, firmissimum propugnaculum sua cuique domus legibus munita.* —*Lofft.*, "Elements of Law." *Nobiles magis plectuntur pecuniâ; plebes vero in corpore:* The higher classes are more punished in money; but the lower in person.—3 *Inst.* 220.

Damages—*continued.*

in place of the jury, to consider what compensation in money shall be given for what is a wrongful act.—*Earl of Halsbury*, L.C., Owners of Steamship "Mediana" *v.* Owners, Master, and Crew of Lightship "Comet" (1900), L. R. App. Ca. [1900], H. L. 116.

See also EVIDENCE, 33.

Day.

I think the better day the better deed.[1]—*Holt*, C.J., Sir Wm. Moore's Case (1703), 2 Raym. 1028.

Delay.

1. Delay will frequently have, as it ought to have, considerable influence upon the judgment which ought to be formed upon the evidence adduced.—*Lord Chelmsford*, Cuno *v.* Cuno (1873), L. R. 2 Sc. & D. 302.

   See CONSTRUCTION, 26; COSTS, 2; JUDGES, 16, *n.*; MISCELLANEOUS, 17, *n.*; 23.

2. It is not to be imagined that the King will be guilty of vexatious delays.[2]—*Ryder*, L.C.J., Rex *v.* Berkley and another (1754), Sayer's Rep. 124.

   See CONSTRUCTION, 26; DILIGENCE, 1; DISCRETION, 11.

Demurrer.

I never did approve, when at the Bar, and I do not approve now, when on the Bench, of the practice of not deciding a substantial question when it is fairly raised between the parties and argued, simply because it is raised by demurrer. It is a great benefit to all parties to have the question in the case speedily and cheaply determined, and the practice of demurring ought, if possible, to be encouraged.—*Sir G. Jessel*, M.R., Fothergill *v.* Rowland (1873), L. R. 17 Eq. Ca. 139.

[1] Walker.

[2] *Lex dilationes semper exhorret:* The law always abhors delays.—2 *Inst.* 240. *Lex reprobat moram:* The law dislikes delay.—*Jenk. Cent.* 35.

There is some truth in the following severe censure: "In the one case, there is a straight road of a mile long, and without a turnpike in it: in the other case, you may go to, or at least towards, the same place by a road of a hundred miles in length—full, accordingly, of turnings and windings—full, moreover, of quicksands and pitfalls, and equally full of turnpikes. In conducting the traveller, nothing obliges the conductors to avoid the straight road, and drag him along the crooked one: nor would they ever have given themselves any such trouble, had it not been for the turnpikes, the tolls of which are so regularly settled, and the tills in such good keeping: learned feet, could they be prevailed on, are no less capable of treading the short road than unlearned ones." — *The Law's delay*—Benthamiana, or Select Extracts from the Works of Jeremy Bentham, 1843, p. 419. *See also Shaks.* "Hamlet," Act III., Sc. 1, The law's delay; MISCELLANEOUS, 37, *infrà.*

Dictum.

1. How necessary it is carefully to consider the language of learned Judges, especially when you are dealing with language which is admitted to be only a *dictum* and not a decision, and when it is attempted to use that language for the purpose of founding on it an article of a code of law.—*James*, L.J., Dawson *v.* Bank of Whitehaven (1877), L. R. 6 Ch. D. 226.

   See below, 3; PRACTICE, 4.

2. Speaking for myself, I do not pay much attention to the *dicta* of modern Judges, as I consider it my duty to decide for myself. This, of course, does not apply to decisions of modern Judges, nor to old recognised *dicta* by eminent Judges.—*Jessel*, M.R., Quilter *v.* Heatly (1883), L. R. 23 C. D. 49.

3. I never allow my construction of a plain enactment to be biassed in the slightest degree by any number of judicial decisions or *dicta* as to its meaning, when those decisions or *dicta* are not actually binding upon me. I read the Act for myself. If I think it clear I express my opinion about its meaning, as I consider I am bound to do. Of course, if other Judges have expressed different views as to the construction, and their decisions are binding on this Court, this Court has simply to bow and submit, whatever its own opinion may be. But when there is no such binding decision, in my view a Judge ought not to allow himself to be biassed in the construction of a plain Act of Parliament (for it appears to me to be plain) by any number of *dicta* or decisions which are not binding on him. The Judge ought with all due respect to examine into them, but he must not allow any number of *dicta*, or even decisions which are not binding on him, to affect his judgment, except in one peculiar case. That case is peculiar, and therefore I will mention it. Where a series of decisions in inferior Courts have put a construction on an Act of Parliament, and thus have made a law which men follow in their daily dealings, it has been held, even by the House of Lords, that it is better to adhere to the course of the decisions than to reverse them, because of the mischief which would result from such a proceeding. Of course, that requires two things, antiquity of decision, and the practice of mankind in conducting their affairs.—*Jessel*, M.R., *Ex parte* Willey; *In re* Wright (1883), L. R. 23 C. D. 127.

   See 1, *above;* JUDGES, 71.

4. In the books there are some loose *dicta* that an Act of Parliament and the common law should respectively stand as originals according to the circumstances of the case; but this is not law, unless it be confined

Dictum—*continued.*

to prohibitions for excess of jurisdiction and to restrain waste.—*Heath*, J., Jefferson *v.* Bishop of Durham (1797), 2 Bos. & Pull. 129.

See also CHANCERY, 1; JURISDICTION, 1; OBITER DICTA, 2.

5. There are old *dicta* of great Judges, which have been followed by many decisions and have become maxims of the law; but modern *dicta* are but attempts to embody in a short form the result of decisions or statutes which any lawyer can examine for himself.—*Kay*, L.J., Dashwood *v.* Magniac (1891), L. R. 3 C. D. 376.

See EQUITY, 18; JUDGES, 65, 71; LAW, 58; OBITER DICTA, 1.

Diligence.

1. The using of legal diligence is always favoured and shall never turn to the disadvantage of the creditor. The maxim *Vigilantibus et non dormientibus succurrunt jura* is one of those that we learn on our earliest attendance in *Westminster Hall*.—*Heath*, J., Cox *v.* Morgan (1801), 1 Bos. & Pull. 412.
2. It is a reasonable presumption that a man who sleeps upon his rights has not got much right.[1]—*Bowen*, L.J., *Ex parte* Hall; *In re* Wood (1883), L. R. 23 C. D. 653.

See CONSENT, 5; DELAY, 2; EQUITY, 15, 33, 34; RIGHTS.

Discovery.

1. Discovery is a matter of remedy, and not matter of right.—*Lord Watson*, Ind, Coope & Co. *v.* Emmerson (1887), 12 L. R. Ap. Ca. 309.
2. Now, in deciding whether discovery ought to be given, we must first consider whether it will help the plaintiff at the trial. If it will not, but will only be of use if the plaintiff obtains a decree, then . . . we consider whether it is fair that the defendant should be obliged to give it at this stage of the proceedings, or whether to compel him to give it would be oppressive.[2]—*Jessel*, M.R., Parker *v.* Wells (1881), L. R. 18 C. D. 483.

See CHANCERY, 6; TORT, 2.

3. The Court is always unwilling before the right to relief is established to make an order for discovery which may be injurious to the defendant, and will only be useful to the plaintiff if he succeeds in establishing his title to relief.—*Cotton*, L.J., Fennessy *v.* Clark (1887), L. R. 37 C. D. 186.

[1] *Vigilantibus non dormientibus jura subveniunt:* Laws come to the assistance of the vigilant, not of the sleepy.—*Wing.* 692.

[2] This statement is in relation to the stage at which discovery ought to be allowed.

Discovery—*continued.*

4. This is the kind of order which makes the administration of justice stink in the nostrils of commercial men.[1]—*A. L. Smith*, L.J., Graham *v.* Sutton, Carden & Co. (1897), L. R. 1 Ch. D. [1897], p. 765.

Discretion.

1. "Discretion" means, when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion[2]; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office, ought to confine himself.[3]—*Lord Halsbury*, L.C., Sharp *v.* Wakefield (1891), 64 L. T. Rep. 180 [1891], Ap. Ca. 173.

See REASONABLE, 4.

2. Discretion, when applied to a Court of justice, means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague, and fanciful, but legal and regular.—*Lord Mansfield*, Case of John Wilkes (1763), 4 Burr. Part IV. 2539.

See below, 6.

3. *Le impress de authority done par le Roy doit silencer inquiry al discretion dun Judge*[4]; *le Roy sole est le proper Judge del ability de ses Ministers et les Chef Justices sont deins le Statute de Scand* (The stamp of authority given by the King ought to silence any inquiry into the discretion of a Judge; the King alone is the proper Judge of the ability of his ministers, and the Chief Justices are within the Statute of Scandal).—*Vaughan*, J., Bushel's Case (1670), Jones's (Sir Thos.) Rep. 15.

4. The discretion of a Judge is the law of tyrants: it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, passion. In the best it is oftentimes caprice; in the worst it is every vice, folly, and passion to which human nature is

[1] This was in reference to what was correctly termed by the learned Judge a "very large order" for discovery and inspection of books and documents. *Rigby*, L.J., also said: "As regards the plaintiff . . . he was wrong in asking for such an extravagant order, and wrong in insisting upon having his pound of flesh. . . . That is the sort of thing which, if permitted, brings the administration of justice into odium."—*Id.* p. 766.

[2] Rooke's Case, 5 Rep. 100 a.

[3] Wilson *v.* Rastall, 4 T. R. App. 757.

[4] The discretion of the Judges ought to be thus described: *Discretio est discernere per legem quid sit Justum;* this is prov'd by the Common Law, in the case of a special verdict, *et sup' totam materiam petunt discretionem Justiciariorum; i.e.* they desire that the Judges would discern by law what is just, and so give judgment accordingly.—4 *Inst.* 4, 12 R. 2, cap. 13; *Fortescue*, Rep. 393.

Discretion—*continued.*

liable.—*Lord Camden*, L.C.J., Case of Hindson and Kersey (1680), 8 How. St. Tr. 57.

See EQUITY, 31, *n.*; JURY, 11.

5. The exercise of a discretion has been characterised as odious; but where the necessity exists for its exercise, a Judge is not bound to shrink from the responsibility devolving on him.—*Crampton*, J., Conway and another *v.* The Queen (1845), 1 Cox, C. C. 217.

6. I must not forget that the discretion given to me must be exercised judicially, not fancifully or arbitrarily.—*Butt*, J., Stoker *v.* Stoker (1889), L. R. 14 Pro. D. 61.

See above, 2.

7. A Judge must determine, not by the crooked cord of discretion,[1] but by the golden mete-wand of the law! I admit that corruption is not to be imputed or supposed in any Judge, but fallibility must be admitted—*humanum est errare;* neither would I subject the opinion of a Judge upon matters of fact to be canvassed before, or submitted to the consideration of juries.—*Perrin*, J., Conway and another *v.* The Queen (1845), 1 Cox, C. C. 216.

See PRACTICE, 3; SOVEREIGNTY, 10, 14.

8. Discretion is a science of understanding, to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their (men's) wills, and private affections; for, as one saith, *talis discretio discretionem conundit.*[2]—*Lord Coke*, Rooke's Case (1598), 5 Rep. 99 b.

9. It is true, as Mr. Folkard put to us, as the Judges of old felt, there are instances in which discretionary power might be grievously abused, and was abused in times such as I trust this country will never see again. At the same time, men are open to the infirmities which unfortunately attach to human nature. There may be dishonest and corrupt Judges among us, though I trust to God that will never happen. I agree you are to frame your rules so as to keep the administration of justice as far as you can beyond the possibility of corruption. On the other hand, if a rule is essential for the convenient administration of justice, you must trust to the honesty of those to whom you commit that most important department of the State. You must trust to the means you have of punishing corruption and

[1] See R. *v.* Walcott, 4 Mod. 401.

[2] The maxim *Discretio est scire per legem quid sit justum* is here further quoted.—10 *Co.* 140. See also 4 Inst. 41, cited *per Tindal*, C.J., Queen *v.* Governors of Darlington School (1844), 6 Q. B. (Adol. & Ell.) 700.

Discretion—*continued.*

dishonesty if you find it operating on the minds of those judicial officers.—*Cockburn*, C.J., Reg. *v.* Charlotte Winsor (1866), 10 Cox, C. C. 313.

See ADMINISTRATION OF JUSTICE, 33, 35; EVIDENCE, 25; JUDGES, 72; MISCELLANEOUS, 53; REASONABLE, 4.

10. The word "discretion" has been frequently used. . . . What does it mean? In honest, plain language it means "do as you like." A direction which is to be actively exercised must be exercised honestly and intelligently, but the discretion which a man chooses to exercise by remaining supine is a duty, if it is a duty, of imperfect obligation. If no shadow of suspicion can be brought against him, if no culpable negligence can be alleged against him, what liability does a man in whom the discretion is vested incur by doing nothing? Attention should be paid to the meaning of the word, and the effect of it in the various cases in which its operation is called in question.—*Bacon*, V.-C., *In re* Norrington; Brindley *v.* Partridge (1879), L. R. 13 C.D. 659.

11. We are to exercise a just discretion and not to promote vexation.—*Lord Mansfield*, Rex *v.* Wardroper (1766), 4 Burr. Part IV., p. 1965.

See COSTS, 2; DELAY, 2.

12. It appears to me wrong in principle for any Court or Judge to impose fetters on the exercise by themselves or others of powers which are left by law to their discretion in each case as it arises.—*Lindley*, L.J., Saunders *v.* Saunders (1897), L. R. Prob. D. [1897], p. 95.

See ADMINISTRATION OF JUSTICE, 35; COMMERCE, 32; JUDGES, 37, 65, 69, *suprà.*

13. It is not the practice of this Court to interfere with the exercise of a judicial discretion.—*Sir W. M. James*, L.J., Bush *v.* Trowbridge Waterworks Co. (1875), L. R. 10 Ch. Ap. Ca. 463.

14. A Judge must have discretion, because without it the business could not go on, the criminal justice of the country could not be administered.—*Mellor*, J. Reg. *v.* Charlotte Winsor (1866), 10 Cox, C. C. 321.

15. I was brought up under a system in which discretion when given was practically absolute. It was the unbroken tradition of Westminster Hall. I believe that system worked justice and saved expense. I hope I may be forgiven if, with what energy remains to me, I strive after many years' experience and drawing near the close of my judicial career, to preserve this unfettered discretion which in my opinion, was given me by Parliament, and which I have never, at least intentionally abused.—*Lord Coleridge*, C.J., Huxley *v.* West London Extension Railway Co. (1886), L. R. 17 Q. B. D. 383.

Discretion—*continued.*

16. However much men may honestly endeavour to limit the exercise of their discretion by definite rule, there must always be room for idiosyncracy; and idiosyncracy, as the word expresses, varies with the man. But there is, besides this, that of which every student of legal history must be aware, the leaning of the Courts for a certain time in a particular direction, balanced at least, if not reversed, by the leaning of the Courts for a certain time in a direction opposite. The current of legal decision runs often to a point which is felt to be beyond the bounds of sound and sane control, and there is danger sometimes that the retrocession of the current should become itself extreme.[1]—*Lord Coleridge*, C.J., Reg. *v.* Labouchere (1884), 15 Cox, C. C. 425.

Doctrine.

1. The old and received law for above a century is not to be broken in upon by any new doctrine.—*Lord Kenyon*, Rex *v.* Walter (1799), 3 Esp. 22.

   See CASES, 7, 21; CONSTRUCTION, 28; LAW, 73; PRECEDENTS, 16, 17.

2. The law of England is wisely reluctant to admit any doctrine which is repugnant to the settled principles and policy of its own institution. —*Stuart*, V.-C., Brook *v.* Brook (1858), 6 W. R. 452.

   See CASES 9, 15, 21; PRECEDENTS, 15.

3. That doctrine cannot be law which injures the rights of individuals, and will be productive of evil to the Church and to the community.[2]—*Best*, C.J., Fletcher *v.* Lord Sondes (1826), 3 Bing. 590.

   See MISCHIEF, 1; PARLIAMENT, 9, 13; TORT, 4.

4. I can never assent to a doctrine so discreditable to our Courts of law as that, because it is equitable and just, that it is therefore not strictly legal.—*Rooke*, J., Oppenheim *v.* Russell (1802), 3 Bos. and Pull. 50.

   See COURTS, 14.

Domicil.

The question of domicil *primâ facie* is much more a question of fact than of law. The actual place, where a person is, is *primâ facie* to a

[1] For further *dicta* on the subject of this heading, see also *per Lord Romilly* in La Blache *v.* Rangel; The "Nina" (1868), L. R. 2 P. C. Ap. Ca. 49; *per Lindley*, L.J., in *Re* The Earl of Radnor's Will Trusts (1890), L. R. 45 C. D. 424; *id.* in Young *v.* Thomas (1892), L. R. 2 C. D., p. 136; *id.* in Wood *v.* Wood, L. R. 1 Pro. D. (1891), p. 275; and *per Lopes*, L.J., in The Queen *v.* Bishop of London, L. R. 24 Q. B. D. (1889), p. 246.

[2] "A most unjust doctrine and I shall not extend it."—Said by *Romer*, J., in reference to the doctrine expounded in Tweedale *v.* Tweedale, 23 Beav. 341. See Minter *v.* Carr (1894), L. R. 2 C. D. [1894], p. 323.

Domicil—*continued.*

great many given purposes his domicil. You encounter that, if you shew, it is either constrained, or from the necessity of his affairs, or transitory; that he is a sojourner, and you take from it all character of permanency. If, on the contrary, you shew that the place of his residence is the seat of his fortune; if the place of his birth, upon which I lay the least stress; but if the place of his education, where he acquired all his early habits, friends, and connexions, and all the links that attach him to society are found there; if you add to that, that he had no other fixed residence upon an establishment of his own, you answer the question.—*Lord Loughborough*, Bempde *v.* Johnstone (1796), 3 Ves. jr. 201.

Ecclesiastical.

1. A decorous simplicity is the characteristic of the Church of England.[1] —*Dr. Lushington*, Westerton *v.* Liddell and Beal *v.* Liddell (1855), 4 W. R. 179.
2. The popish religion is now unknown to the law of this country.[2]—*Lord Kenyon*, Du Barré *v.* Livette (1791), Peake's N. P. Cases, 79.

[1] The basis of the religious establishment in this realm was, I am satisfied, intended by the Constitution and the law to be broad and not narrow. Within its walls there is room, if they would cease from litigation, for both parties; for that which is represented by the promoter and for that which is represented by the defendant; for those whose devotion is so supported by simple faith and fervent piety that they derive no aid from external ceremony or ornament, and who think that these things degrade and obscure religion; and for those who think with Burke, that religion "should be performed, as all public solemn acts are performed, in buildings, in music, in decorations, in speech, in the dignity of persons according to the customs of mankind taught by their nature, that is, with modest splendour and unassuming state, with mild majesty and sober pomp;" who sympathize with Milton the poet rather than with Milton the puritan; and who say that these accessories of religious rites,—

". . . . dissolve them into ecstacies,
And bring all heaven before their eyes."

St. Chrysostom and St. Augustine represented different schools of religious thought; the primitive Church held them both. Bishop Taylor and Archbishop Leighton differed as to ceremonial observances, but they prayed for the good estate of the same Catholic Church; they held the same faith "in the unity of spirit, in the bond of peace, and in righteousness of life;" and the English Church contained them both. There is surely room for both the promoter and the defendant in this Church of England, and I should indeed regret if, with any justice, it could be said that this judgment had the slightest tendency either to injure the Catholic foundations upon which our Church rests, or to abridge the liberty which the law has so wisely accorded to her ministers and her congregations.—*Sir R. Phillimore*, Martin *v.* Mackonochie; Flamank *v.* Simpson (1868), 16 W. R. 636.

Ecclesia est domus mansionalis Omnipotentis Dei: The Church is the mansion-house of the Omnipotent God.—2 *Inst.* 164.

[2] It was proposed in this case to call as a witness a party whose knowledge had been acquired by having previously acted as interpreter between the defendant, when under a criminal charge, and his attorney; and in support of the admissibility of his evidence, a case was cited, in which a Protestant clergyman had

Ecclesiastical—*continued.*

3. *Rokeby*, J: I do not think but a Popish doctor may be a good doctor to a Protestant patient; but I do not think that a Popish governor can be a good governor for a Protestant subject.

Holt, C.J.: Aye, but a Popish censor is not so proper to supervise and inspect all the Protestant physicians.[1]—King *against* Dr. Burrel (1699), 5 Mod. 432.

4. The bishop is in the nature of an ecclesiastical sheriff.—*North*, C.J., Walwyn *v.* Awberry and others (1678), 1 Mod. 260.

5. It is notorious that the Reformation, which was begun in *Henry* the Eighth's time, was, by the unwearied diligence of the priests and jesuits, very much broke in upon and interrupted, so that it cannot be said to have been complete till the reign of Queen *Elizabeth*, who had many and great struggles with the Papists.—*Pratt*, L.C.J., Thornby *v.* Fleetwood (1770), 1 Str. Rep. 375.

6. The discussion which was made by Luther, Melancthon, and the other persons who preceded the Reformation, opened the eyes of the public; and they got rid of the delusions which had been spread by the Pope of Rome, and emancipated mankind from the spiritual tyranny they were under, and brought about the establishment of that religion which we now enjoy in this country.[2]—*Lord Kenyon*, Reeves' Case (1754), 26 How. St. Tr. 591.

been compelled to disclose a confession made to him by a Papist, and upon which evidence the prisoner was convicted and executed. This evidence was rejected by Lord Kenyon to the above effect, adding that it was not necessary for the prisoner to make that confession to aid him in his defence.

[1] Taken with quotation 2 in this heading, and the toleration of opinions both as to race and creed now happily existent in England and the British dominions, former *dicta* from the judicial bench relative to Papists at this date can only be considered ridiculous and of bad taste, however much reason may have existed for their pronouncement in former times. With the increase of population in England, Papists have also increased in proportion both as to quantity and quality, and Englishmen, with the spirit of the times, can well afford no longer to look upon their Papist brethren in the light in which they were regarded in days of old by high judicial dignitaries and others who even considered them enemies of the country. In illustration of this we have it from Pollexfen, C.J., in 1691, that he thought "Englishmen have no greater enemies than the French and the Papists."—*Case of Sir Richard Grahme and others*, 12 How. St. Tr. 741. The introduction of the French here together with the Papists will at this date not prove a surprise, having regard to that period of our history.

[2] "This venerable body of men (the clergy) being separate and set apart from the rest of the people, in order to attend the more closely to the service of Almighty God . . . had formerly much greater privileges, which were abridged at the time of the Reformation on account of the ill-use which had been made of them."—*Sir Wm. Blackstone* (1765), Com. Vol. 1., p. 343. The records of the Courts in which the canon law was administered in England would probably be of high interest. A well-known passage at the commencement of Chaucer's Friar's Tale, descriptive of an Archdeacon's Court, can hardly fail to whet the appetite of the investigator into the laws and manners and customs of our ancestors.

Ecclesiastical—*continued.*

7. The spectacle of a clergyman imprisoned for persistence in illegal ritualistic practices may shock the public conscience, and raise sympathy for a man who really deserves none, while the spectacle of a man suspended after due warning from an office, the laws attaching to which he disregards, or from a benefice obtained under conditions which he will not fulfil, is one which must commend itself to every reasonable man.—*Lord Thesiger*, L.J., Martin *v.* Mackonochie (1879), L. R. 4 Q. B. 724.

Ejectment.

1. An ejectment is an ingenious fiction, for the trial of titles to the possession of land.—*Lord Mansfield*, Fair-claim, &c. *v.* Sham-title (1761), 3 Burr. Part IV., p. 1294.
2. This case of removing a man who *lives upon his* own, is a case of a tender nature: and the Court ought not to give too readily in to it.—*Lord Hardwicke*, Rex *v.* Inhabitants of Sundrish (1734), Burrow (Settlement Cases), 9.

Equity.

1. A Court of equity ought to follow the law.[1]—*Kindersley*, V.-C., Wynch *v.* Grant (1854), 3 W. R. 6.
2. Equity and common law are two distinct systems, unlike any existing in any foreign country.[2]—*Lopes*, L.J., *In re* Henderson (1887), L. J. Rep. (N. S.) 57 C. D. 383.

See COMMON LAW, 9.

The archdeacon is described as exercising, *inter alia*, the following jurisdiction :—

"Whilom there was dwellyng in my countré,
An erchedeken, a man of great degré,
That boldely did execucioun,
In punyschyng of fornicacioun,
Of wicchecraft, and eek of bauderye,
Of diffamacioun, and avoutrie,
Of chirche—reves, and of testamentes,
Of contractes, and of lak of sacraments,
And eek of many another maner cryme,
Which needith not to reherse at this tyme."

[1] *Æquitas sequitur legem.* For illustration of this maxim, see Snell, Prin. of Eq. 18. See also 1 Madd. Ch. Pr. 730. *Lex aliquando sequitur æquitatem:* Law sometimes follows equity.—3 *Wils.* 119.

Equity is no part of the law, but a moral virtue, which qualifies, moderates, and reforms the rigor, hardness and edge of the law, and is a universal truth. It does also assist the law, where it is defective and weak in the constitution (which is the life of the law), and defends the law from crafty evasions, delusions and mere subtleties, invented and contrived to evade and elude the common law, whereby such as have undoubted right are made remediless. And thus is the office of equity to protect and support the common law from shifts and contrivances against the justice of the law. Equity, therefore, does not destroy the law, nor create it, but assists it.—*Sir John Trevor*, M.R., Dudley *v.* Dudley, Preced. in Ch. 241, 244; 1 *Wooddeson*, Lect. VII. 192; 1 *Story*, Eq. Jur. 13.

[2] All nations have equity. But some have law and equity mixed in the same Court, which is worse; and some have it distinguished in several Courts, which is better.—*Lord Bacon*, 4 Bac. Works, 274.

Equity—*continued.*

3. I do not think that Courts of equity ought to go otherwise than the Courts of law.[1]—*Talbot*, L.C., Lord Glenorchy *v.* Bosville (1733), W. & T. Leading Cas. in Eq. 16.

   See PRECEDENTS, 4.

4. Equity will go no further than the law.—*Lord Kenyon*, C.J., Tooke *v.* Hollingworth (1793), 5 T. R. 225.

5. It is true that Courts of equity, in administering justice, sometimes go further than the Courts of law.—*Lord Alvanley*, C.J., Houghton *v.* Matthews (1803), 3 Bos. & Pull. 497.

6. A Court of equity can mould interests differently from a Court of law; and can give relief in cases where a Court of law cannot.[2]—*Lord Kenyon*, C.J., Clayton *v.* Adams (1796), 6 T. R. 605.

7. Courts of equity make their decrees so as to arrive at the justice of the case without violating the rules of law.—*Lord Kenyon*, C.J., Clayton *v.* Adams (1796), 6 T. R. 605.

   See PRACTICE, 3.

8. Nor doth the law of the land speak against him. But that and equity ought to join hand in hand, in moderating and restraining all extremities and hardships. . . . They both aim at one and the same end, which is, to do right.[3]—*Lord Ellesmere*, Earl of Oxford's Case (1616), Rep. in Ch. 3, 4.

   See COMMON LAW, 9; LAW, 50.

9. The course of equity is a part of the constitution of the law and judicial proceedings in this kingdom.—*Lord Hardwicke*, Garth *v.* Cotton (1750), 1 Ves. 524.

10. It appears to me to be the duty of every Court, whether a Court of equity or a Court of law, to give effect to the plain meaning of the Legislature, whatever may be the views entertained of its policy or applicability in particular cases.—*Sir W. M. James*, V.-C.,

[1] The popular idea of a Court of equity is, that it sits (as Selden has it), "a roguish thing" (*see post*, EQUITY, 20, *n.*), the Chancellor, like an Eastern Cadi, doing of his own mere notion what he thinks meet and just. Nor is it only among the vulgar that the notion is entertained. Dr. Samuel Johnson means something very like it when he says: "The Chancellor hath power to moderate and temper the written law, and subjecteth himself only to the law of nature and reason."

[2] Law, without equity, though hard and disagreeable, is much more desirable for the public good, than equity without law.—*Sir Wm. Blackstone* (1765), Com. Bk. I., sec. 2, p. 41.

[3] *Equality is equity.* "A Judge ought to prepare his way to a just sentence, as God useth to prepare his way, by raising valleys and taking down hills: so when there appeareth on either side a high hand, violent prosecution, cunning advantages taken, combination, power, *great counsel*, then is the virtue of a Judge seen to make inequality equal; that he may plant his judgment as upon even ground."—*Bacon*, "Essay on Judicature."

Equity—*continued.*

Daun *v.* City of London Brewery Co. (1869), L. R. 8 Eq. Ca. 161.

See also CONSTRUCTION, 28; LAW, 22; PARLIAMENTARY, 17; STATUTES, 8, 15.

11. A Court of equity knows its own province.—*Lord Kenyon,* Mayor, &c. of Southampton *v.* Graves (1800), 8 T. R. 592.

12. A party who seeks equity must do equity.[1]—*Cottenham,* L.C., Sturgis *v.* Champneys (1839), 5 My. & Cr. 105.

13. I do not pretend to dispense equity at large, but only by the consent of the parties, upon a rule of Court.—*Holt,* C.J., Anonymous (1699), 3 Salk. 213.

14. Courts of equity in ancient times, were more in the habit of taking to themselves the decision of questions of fact than they have thought wise and discreet in later times. All the Judges have demonstrated their opinion, to send the question of fact to a jury, where any reasonable doubt is raised; and I cannot suppose there is any prejudice in a tribunal appointed according to the constitution of the country to try the fact.—*Lord Eldon,* O'Connor *v.* Cooke (1803), 8 Ves. 576.

See JURY, 8, 9; REASONABLE, 1.

15. Courts of equity have always considered it of the greatest possible importance that parties should not sleep on their rights.—*Sir J. Romilly,* M.R., Browne *v.* Cross (1852), 14 Beav. 113.

See also 33, 34, *below;* CONSENT, 5, *n.*; DILIGENCE, 2; RIGHTS, 4.

16. We ought not to interpose in a matter which seems peculiarly to belong to the jurisdiction of a Court of equity.—*Abbott,* C.J., Davey *v.* Prendergrass (1821), 2 Chit. Rep. 340.

17. We are now Courts of equity, and must decide the thing according to all the rights.—*Lord Coleridge,* Cooper *v.* Griffin (1892), 61 L. J. Rep. Q. B. 566.

18. I have always thought that formerly there was too confined a way of thinking in the Judges of the common law Courts, and that Courts

[1] For illustration of this maxim, see Snell's "Principles of Equity" (ed. 1868), p. 38. Also as to the meaning in Chancery of this maxim, see Oxford *v.* Provand, L. R. 2 P. C. Ap. Cas. 135. It is best illustrated by the enforcing of a wife's equity to a settlement: Sturgis *v.* Champneys, 5 My. & Cr. 105; and the principle that where a person having a title to an estate stands by and allows another who is ignorant of the facts to expend money upon it, cannot claim without giving compensation: Hallett *v.* Martin, 24 C. D. 624.

"Equity in its true and genuine meaning, is the soul and spirit of all law; *positive* law is construed, and *rational* law is made, by it. In this, equity is synonymous to justice; in that, to the true sense and sound interpretation of the rule."—*Blac. Comm.* Bk. III., c. 17, p. 222.

Equity—*continued.*

of equity have risen by the Judges not properly applying the principles of the common law, being too narrowly governed by old cases and maxims, which have too much prevented the public from having the benefit of the common law.—*Wilmot*, L.C.J., Collins *v.* Blantern (1767), 2 Wils. 341.

See 2, *above, and reference;* DICTUM, 5; JUDGES, 65, 71; PRECEDENTS, 10.

19. I cannot agree that the doctrines of this Court are to be changed with every succeeding Judge. Nothing would inflict on me greater pain in quitting this place, than the recollection that I had done anything to justify the reproach that the equity of this Court varies like the Chancellor's foot.[1]—*Eldon*, L.C., Gee *v.* Pritchard (1818), 2 Swanston, 414.

See PRACTICE, 3; PRECEDENTS, 20.

20. It must not be forgotten that the rules of Courts of equity are not, like the rules of the common law, supposed to have been established from time immemorial. It is perfectly well known that they have been established from time to time—altered, improved, and refined from time to time. In many cases we know the names of the Chancellors who invented them. No doubt they were invented for the purpose of securing the better administration of justice, but still they were invented. Take such things as these: the separate use of a married woman, the restraint on alienation, the modern rule against perpetuities, and the rules of equitable waste. We can name the Chancellors who first invented them, and state the date when they were first introduced into Equity jurisprudence; and therefore, in cases of this kind, the older precedents in equity are of little value. The doctrines are progressive, refined, and improved; and if we want to know what the rules of Equity are, we must look, of course, rather to the more modern than the more ancient cases.—*Jessel*, M.R., *In re* Hallett's Estate; Knatchbull *v.* Hallett (1879), L. R. 13 C. D. 710.

See also MARRIED WOMAN.

21. I think that common law is better than equity.—*Lindley*, L.J., Angus *v.* Clifford (1891), L. J. Rep. (N. S.) 60 C. D. 455.

See COMMON LAW, 8.

[1] "Equity is a roguish thing: for law we have a measure; know what to trust to. Equity is according to the conscience of him that is Chancellor; and, as that is larger or narrower, so is equity. 'Tis all one, as if they should make his foot the standard for the measure we call a *foot* 'a Chancellor's foot'; what an uncertain measure would this be! One Chancellor has a long foot, another a

Equity—*continued.*

22. This Court should determine upon broad principles which will meet the common sense of mankind.—*Kenyon*, M.R., Stebbing *v.* Walkey (1786), 1 Cox, Eq. Ca. 252.

23. A Court of equity may do great things, but cannot alter things, or make them to operate contrary to their essential natures and properties. —*Powel*, B., Montague *v.* Lord Bath (1693), 3 Ca. in Ch. 67.

24. Equity has not relieved against gross improvidence.—*Lord Brougham*, Duke of Beaufort *v.* Neeld (1845), 12 Cl. & F. 260.

See TORT, 16.

25. A man must come into a Court of equity with clean hands.[2]—*Eyre*, L.C.B., Dering *v.* Earl of Winchelsea (1787), 1 Cox, Eq. Ca. 319.

26. It is a rule that those who come into a Court of justice to seek redress, must come with clean hands, and must disclose a transaction warranted by law.—*Lord Kenyon*, C.J., Petrie *v.* Hannay (1789), 3 T. R. 422.

See also PARLIAMENT, 9 ; PLEADINGS, 6; PROSECUTION ; RELIEF, 3 ; TORT, 2.

27. When any one comes into a Court of equity to ask that which would not be granted in a Court of law, that person must come into Court with clean hands.—*Kay*, L.J., Roberts *v.* Cooper (1891), 60 L. J. Rep. (N. S.) C. D. 381.

See RELIEF, 1.

28. In this case the plaintiff does not come into Court with clean hands ; he alleges his own turpitude, and is indictable for his fraud.—*Rooke*, J., Farmer *v.* Russell (1798), 2 Bos. & Pull. 301.

See RELIEF, 3 ; TORT, 16.

29. The strict primary decree of this Court, as a Court of equity, is *in personam.*[3]—*Lord Hardwicke*, Penn *v.* Lord Baltimore (1750), 1 Ves. 444.

30. The paternal jurisdiction of Courts of equity.[4]—*Kay*, J., Mainland *v.* Upjohn (1889), 58 L. J. Rep. (N. S.) C. D. 363.

31. Though proceedings in equity are said to be *secundem discretionem*

short foot, a third an indifferent foot ; 'tis the same thing in the Chancellor's conscience."—*Selden*, "Table Talk," title : Equity, p. 37.

[1] The reader will note that the English principle in this respect widely differs from the Roman law ; which kept prodigals in a state of perpetual pupilage.

[2] "When this is said, it does not mean a general depravity ; it must have an immediate and necessary relation to the equity sued for ; it must be a depravity in a legal, as well as in a moral sense."—*Id.* See also *Snell's* "Prin. of Equity," 39 ; *Story*, Eq. Jur. (12th ed.) 58.

[3] Equity acts *in personam.* For illustration of this maxim, see *Snell's* "Prin. of Equity," 43.

[4] "He (Lord Nottingham) has been emphatically called 'the father of equity.'"—*Sir W. Blackstone* (1765), Com. Bk. III., Ch. 4, p. 55.

Equity—*continued.*

boni viri, yet when it is asked, "Vir bonus est quis?" the answer is, "Qui consulta patrum, qui leges juraque servat."[1]—*Sir Joseph Jekyll*, Cowper *v.* Cowper (1735), 2 P. Will. 753.

See DISCRETION, 4.

32. A Court of equity interposes only according to conscience.—*Lord St. Leonards*, Birch *v.* Joy (1851), 3 H. L. C. 598.

33. A Court of equity which is never active in relief against conscience, or public convenience, has always refused its aid to stale demands where the party has slept upon his right, and acquiesced for a great length of time. Nothing can call forth this Court into activity, but *conscience, good faith* and *reasonable diligence;* where these are wanting, the Court is *passive* and does nothing.[2]—*Lord Camden*, Smith *v.* Clay (1767), 3 Bro. Ch. Ca. 639 n.

See above, 15; CONSENT, 4, 5; COURTS, 8; DILIGENCE, 2; JUDGES, 47; LIMITATION, 1, 2; REASONABLE, 1; RELIEF, 3.

34. It is the constant practice of Courts of equity to discourage stale

[1] Lord Campbell makes the following observations upon the Chancellor's supposed *prætorian* power, or *nobile officium:* "It is a common opinion that English equity consists in the Judge acting upon his own notions of what is right, always softening the rigour of the common law when he disapproves of it, and dispensing with the application to particular cases of common law rules allowed to be generally wise,—so that he may reach justice according to the circumstances of each particular case, in pursuance of the suggestion of Lord Bacon,—'*Habeant Curiæ Prætoriæ potestatem* tam subveniendi contra rigorem legis quam supplendi defectum legis.'—De Augmentis Scient. lviii.; Aphor. 35.*

"But with us there is no scope for judicial caprice in a Court of Equity more than elsewhere. Our equitable system has chiefly arisen from supplying the defects of the common law, by giving a remedy in classes of cases for which the common law had provided none, and from a universal disregard by the equity Judge of certain absurd rules of the common law, which he considers inapplicable to the whole category to which the individual case under judgment belongs. In former *unconscientious* Chancellors, talking perpetually of their conscience, have decided in a very arbitrary manner, and have exposed their jurisdiction to much odium and many sarcasms. But the preference of individual opinion to rules and precedents has long ceased: 'the doctrine of the Court' is to be diligently found out and strictly followed; and the Chancellor sitting in equity is only to be considered a magistrate, to whose tribunal are assigned certain portions of forensic business, to which he is to apply a well-defined system of jurisprudence,—being under the control of fixed maxims and prior authorities, as much as the Judges of the common law. He decides 'secundum arbitrium boni viri'; but when it is asked, 'Vir bonus est quis?' the answer is, 'Qui consulta patrum, qui leges juraque servat.'"—*Lives of the Ld. Chan.* Vol. 1., p. 11.

[2] "Altho' the *surety* is not troubled or molested for the debt, yet at any time after the money becomes payable on the original bond, this Court will decree the *principal* to discharge the debt; it being unreasonable that a man shall always have such a cloud hang over him."—*Lord Keeper North*, Ranelaugh *v.* Hayes (1683), 1 Vern. 189, 190. (*This is quoted to illustrate the exclusive coercive jurisdiction of equity in cases where it is against conscience to permit a passive state of things to continue.*)

* In like manner, let the Courts of the Lord Chancellor have the power both of relieving against the rigour and supplying the defects of the Common Law.

Equity—*continued.*

demands.—*Sir Thomas Plumer*, M.R., Att.-Gen. *v.* Mayor of Exeter (1822), Jacob's Rep. 448.

See above, 15; DILIGENCE, 2; RIGHTS, 4.

35. Confederacies and combinations are very proper heads of relief.—*Lord Hardwicke*, Worthington *v.* Foxhall (1750), Barnardiston's Rep. 263.

36. *Il est fort equitable et de publique convenience que gens ferront aide en recovery de lour duties* (It is very agreeable to Equity, and of public convenience, that people should be aided in recovering their duties).—*Vaughan*, C.J., Witherhead *v.* Harrison (1670), Jones's (Sir Thos.) Rep. 2.

See COURTS, 7; JUDGES, 47; JUSTICE, 4.

37. It is not the function of a Court of justice to enforce or give effect to moral obligations which do not carry with them legal or equitable rights.—*Lord Macnaghten*, Blackburn, Low & Co. *v.* Vigors (1887), L. R. 12 Ap. Ca. 543.

See MORALS, 3, *and references therefrom;* TORT, 2.

38. It would not be correct to say that every moral obligation involves a legal duty; but every legal duty is founded on a moral obligation.[1] —*Lord Coleridge*, C.J., The Queen *v.* Instan (1893), L. R. 1 Q. B. [1893], p. 453.

See CONTRACT, 2; FRAUD, 14; MISCELLANEOUS, 11; TORT, 4; TRUTH, 8.

Esquire.

1. Esquire is neither a profession nor occupation.[2]—*Martin*, B., Perrins *v.* Marine, &c. Society (1860), 8 W. R. 563.

2. When a man is asked if he is an esquire, and he answers that he is an esquire, the general understanding is that he is a person of no profession or occupation.—*Cockburn*, C.J., Perrins *v.* Marine and General Travellers' Ins. Co. (1859), L. T. Rep. (N. S.) Vol. 1, p. 27.

See also antè, COUNSEL, 1, *n.*, 2.

3. Considering the laxity with which the title of Esquire has been used, as is the subject of remark by Sir *Thomas Smith*, in his days, as to the title of gentleman[3] . . . the Court cannot take upon itself in this case

[1] All laws stand on the best and broadest basis which go to enforce moral and social duties.—*Lord Kenyon*, C.J., Pasley *v.* Freeman (1789), 3 T. R. 51.

[2] "These, Sir Edward Coke says, are all the names of *dignity* in this kingdom (alluding to the peerage, baronetage and knights), esquires and gentlemen being only names of *worship*."—2 *Inst.* 667. *Steph. Comm.* (9th ed.), Vol. 2, 617.

[3] Commonw. of Eng. b. 1, c. 20.

Esquire—*continued.*

to define, whether it has been improperly assumed.[1]—*Sir William Scott*, Ewing *v.* Wheatley (1814), 2 Hagg. Con. Rep. 183.

4. The term esquire has no relation whatever to landed property.—*Willes*, J., Jones *v.* Smart (1785), 1 T. R. 50.
5. I know of no privileged class of society, and I do not know an esquire has any privileges a yeoman has not.[2]—*Abbott*, C.J., Case of Edmonds and others (1821), 1 St. Tr. (N. S.) 889.

Estimate.

An estimated value is a precarious measure of justice, compared with the specific thing.—*Lord Mansfield*, Fisher *v.* Prince (1762), 3 Burr. Part IV. 1365.

Evidence.

1. There is no difference, in point of evidence, whether the case be a criminal or civil case; the same rules must apply to both.—*Hotham*, B., King *v.* Cator (1802), 14 Esp. 143.

See CRIMINAL JUSTICE, 1, 5.

[1] Esquires and gentlemen are confounded together by Sir Edward Coke, who observes, that every esquire is a gentleman, and a gentleman is definced to be one *qui arma gerit*. . . . It is indeed a matter somewhat unsettled, what constitutes the distinction, or who is a real *esquire*: for it is not an estate, however large, that confers this rank upon its owner.—*Steph. Comm.* (9th ed.), Vol. 2, p. 618. (On this subject *see also* COUNSEL, 1, *n.*, *antè*, p. 51.) Till a recent period, this term was affixed to the names of men of birth and professional persons only. Men of inferior importance had "Mr." prefixed to their names, and thus a distinction between the two classes was kept up. Now it is quite customary to add "Esq." to the names of the better class of tradesmen when they are addressed as private persons. It is a trifle, yet it might have been better if the old rule had been adhered to: for, in the first place, the extension of the term is grammatically wrong, seeing that it is only applicable to men entitled to bear arms; and in the second, if there is any honour in the appellation, it is right that the superior class should have it, in which case it would serve as one of the incentives which work upon the ambition of the mercantile classes, prompting them to the industry which leads to honours. It appears, however, that the tendency of honourable terms is ever, like that of glaciers, downward. In the seventeenth century, in Scotland, the term "Mr." was reserved for clergymen, barristers, and other persons of consequence, while the mercantile classes only had their naked names. "Mr." then came down to the mercantile classes, from whom it is now going to the better class of working men. So, also, "Sir," which originally signified a lord (*sihor*, Gothic), has gradually descended till it is applied to nearly every respectable person.

[2] Upon the best English authorities, *yeoman* is a title of courtesy.—*Chamberlain*, J., Weldon's Case (1795), 26 How. St. Tr. 242.

A *yeoman* is he that hath free land of forty shillings by the year; who was antiently thereby qualified to serve on juries, vote for knights of the shire, and do any other act, where the law requires one that is *probus et legalis homo*.—*Steph. Comm.*, Vol. 2 (9th ed.), 619.

Yeoman or yoman [fr. *guma*, Sax.; gommans, Theotise], a man of a small estate in land; a farmer, a gentleman farmer; also, a 40*s.* freeholder not advanced to the rank of a gentleman; the highest order among the plebeians.—2 *Inst.* 668.

Evidence—*continued.*

2. Sitting in a Court of law, I can receive no evidence but what comes under the sanction of an oath.—*Lord Kenyon*, Wright *v.* Barnard (1797), 2 Esp. 701.

   See AFFIDAVIT, 2; CRIMINAL JUSTICE, 36.

3. The witness swears more generally on his senses, the juror by collection and inference, by the act and force of his understanding.—*Vaughan*, L.C.J., Bushel's Case (1670), Jones' (Sir Thos.) Rep. 16.

   See INTERROGATORIES; JURY, 3.

4. Some instances of strength of memory are very surprising.—*Buller*, J., Coleman *v.* Wathen (1793), 5 T. R. 245.

5. It is difficult to say what is or is not evidence in itself, because it all depends upon the chain and connection it has—if there are two or three links in the chain, they must go to one first and then to another, and see whether they amount to evidence.[1]—*Eyre*, L.C.J., Tooke's Case (1794), 25 How. St. Tr. 76.

6. To my mind the taking some expression of a Judge used in deciding a question of fact as to his own view of some one fact being material on a particular occasion, as laying down a rule of conduct for other Judges in considering a similar state of facts in another case, is a false mode of treating authority. It appears to me that the view of a learned Judge in a particular case as to the value of a particular piece of evidence is of no use to other Judges who have to determine a similar question of fact in other cases where there may be many different circumstances to be taken into consideration.—*Brett*, L.J., Ecclesiastical Commissioners for England *v.* Kino (1880), L. R. 14 C. D. 225.

   See JUDGES, 11, 70, *and references there given.*

7. I cannot go upon suspicion; I can only look at the evidence.—*Lord Selborne*, L.C., Nobel's Explosives Co. *v.* Jones (1882), L. R. 8 Ap. Cas. 9.

8. A fair suspicion may be well worthy of further investigation, and it may well be worth the expense and trouble of examining witnesses to see whether it is well founded.—*Jessel*, M.R., *In re* Gold Co. (1879), L. R. 12 C. D. 84.

   See WITNESS, 2.

9. Suspecting is not believing; saying he suspects would not be well; but swearing according to his estimation is sufficient.—*Lord Hardwicke*, C.J., Smith *v.* Boucher and others (1734), 7 Mod. Rep. 178.

[1] ". . . . A good corroborating chain, if they fail in the last link, the whole will fall to the ground."—*Pratt*, L.C.J., Wilkes *v.* Wood (1763), Lofft. 12.

Evidence—*continued.*

10. Certainly, no evidence will be received but what is legal evidence—at least, none but what the Judge thinks is legal; you may take that for granted.[1]—*Holroyd*, J., Redford *v.* Birley and others (1822), 1 St. Tr. (N. S.) 1174.

See 11, 31, *below;* COURTS, 14; CRIMINAL JUSTICE, 8; JURY, 17; TRIAL FOR LIFE, 1.

11. It is the duty of the Judge in criminal trials to take care that the verdict of the jury is not founded upon any evidence except that which the law allows.—*Lord Coleridge*, C.J., Reg. *v.* Gibson (1887), 18 Q. B. D. 537; 16 Cox, C. C. 181.

See 10, *above;* 31, *below;* JUDGES, 52; JURY, 4, 8.

12. Circumstantial evidence only raises a probability.—*Pollock*, C.B., Reg. *v.* Rowton (1865), 13 W. R. 437.

See 28, *below;* PRESUMPTION, 1; WITNESS, 1.

13. I wish that objections to questions as leading, might be a little better considered before they are made. It is necessary, to a certain extent, to lead the mind of the witness to the subject of inquiry. If questions are asked, to which the answer "Yes" or "No" would be conclusive, they would certainly be objectionable, but in general no objections are more frivolous than those which are made to questions as leading ones.[2]—*Lord Ellenborough*, Nicholls *v.* Dowding and another (1815), 1 Stark. 81.

See 18, *below;* COUNSEL, 25; WITNESS, 2.

14. You must answer any questions that are not ensnaring questions.—*Wright*, L.C.J., Trial of the Seven Bishops (1688), 12 How. St. Tr. 310.

See 19, *below;* CHARACTER, 2, 4; MISCELLANEOUS, 19; WITNESS, 2.

15. There is no fixed rule which binds the counsel calling a witness to a particular mode of examining him. If a witness, by his conduct in the box, shows himself decidedly adverse, it is always in the discretion

[1] The wisdom and goodness of our law appear in nothing more remarkably, than in the perspicuity, certainty, and clearness of the evidence it requires to fix a crime upon any man, whereby his life, his liberty, or his property may be concerned: herein we glory and pride ourselves, and are justly the envy of all our neighbour nations. Our law, in such cases, requires evidence so clear and convincing, that every by-stander, the instant he hears it, must be fully satisfied of the truth of it; it admits of no surmises, innuendos, forced consequences, or harsh constructions, nor anything else to be offered as evidence, but what is real and substantial, according to the rules of natural justice and equity.—*Lord Cowper*, 8 New Parl. Hist. 338; Proceedings against Bishop Atterbury (1723), 16 How. St. Tr. 323; *id.* Vol. 29, p. 1328. *See also post*, TRIAL FOR LIFE, 1, 2, *and references therefrom.*

[2] The objection in principle applies only to those cases where the question propounded involves an answer immediately concluding the merits of the case, and indicating to the witness an answer which will best accord with the interests of the party.—*Stark. Evid.* (4th ed.), 166. 2 *Pothier*, by Evans, 265, referred to.

Evidence—*continued.*

of the Judge to allow a cross-examination.—*Best*, C.J., Clarke *v.* Saffery (1824), Ry. & M. 126.

See 16, 17, 18, *below.*

16. I mean to decide this, and no further. That in each particular case there must be some discretion in the presiding Judge, as to the mode in which the examination shall be conducted, in order best to answer the purposes of justice.—*Abbott*, L.C.J., Bastin *v.* Carew (1824), Ry. & M. 127.

See 15, *above;* 17, 20, *below;* CRIMINAL JUSTICE, 2, *and references therefrom.*

17. There are cases where examinations are admitted, namely, before the coroner, and before magistrates in cases of felony. That appears to me to go rather in support of the general rule than in destruction of it. Every exception that can be accounted for is so much a confirmation of the rule that it has become a maxim, *Exceptio probat regulam.*—*Lord Kenyon*, The King *v.* Inhabitants of Eriswell (1790), 3 T. R. 722.

See 23, *below.*

18. I apprehend that you may put a leading question to an unwilling witness on the examination in chief at the discretion of the Judge; but you may always put a leading question in cross-examination, whether a witness be unwilling or not.—*Alderson*, B., Parkin *v.* Moon (1836), 7 C. & P. 409.

See 13, 15, *above.*

19. Try if you can trap him in any question.—*Dolben*, J., Rex *v.* Green and others (1679), 7 How. St. Tr. 176.

See 14, *above.*

20. A general fishing cross-examination ought not to be permitted.—*Lord Esher*, M.R., Coulson *v.* Disborough (1894), L. R. 2 Q. B. D. [1894], p. 318.

See 16, *above, and references therefrom.*

21. It appears to us contrary to all rules of evidence, and opposed to natural justice, that the evidence of one party should be received as evidence against another party, without the latter having an opportunity of testing its truthfulness by cross-examination.—*Lopes*, L.J. Allen *v.* Allen (1894), L. R. P. D. (C. A.) [1894], p. 253.

See ADMINISTRATION OF JUSTICE, 1, 19; CRIMINAL JUSTICE, 7; PROPERTY, 14.

22. There are hundreds of actions tried every year in which the evidence is irreconcilably conflicting, and must be on one side or other wilfully

Evidence—*continued.*

and corruptly perjured.—*James*, L.J., Flower *v.* Lloyd (1879), L. R. 10 C. D. 333.

See ADMINISTRATION OF JUSTICE, 15, *and references therefrom;* CRIMINAL JUSTICE, 36.

23. I think that reading parts of evidence given in a former case is not a legal course.—*Erle*, J., Queen *v.* Dowling (1848), 7 St. Tr. (N. S.) 440.

See 17, *above.*

24. I can only recommend to you not to break in upon parts of the evidence.—*Eyre*, L.C.J., Tooke's Case (1794), 25 How. St. Tr. 76.

See ADMINISTRATION OF JUSTICE, 14.

25. A hostile witness is a witness who, from the manner in which he gives his evidence, shows that he is not desirous of telling the truth to the Court.—*Sir J. P. Wilde*, Coles *v.* Coles and Brown (1866), L. R. 1 P. & D. 71.

See also FRAUD, 27, *and references therefrom.*

26. I think that the situation in which this witness stands towards either party, does not give the party calling the witness a right to cross-examine her, unless her evidence was of itself of such a nature as to make it appear that she was an unwilling witness.—*Erskine*, J., R. *v.* Ball and others (1839), 8 C. & P. 745.

27. Artificial rules upon matters of evidence are better avoided as far as possible.—*Wills*, J., Hennessy *v.* Wright (1888), L. R. 21 Q. B. 518.

See MISCELLANEOUS, 24.

28. I think it is impossible to give credit to testimony that would prove infinitely more than can be brought within the bounds of probability. —*Lord Westbury*, Neilson *v.* Betts (1871), L. R. 5 Eng. & Ir. Ap. Ca. 20.

See 12, *above.*

29. We are obliged to hear all that witnesses have to say; but it is a canticle of Courts of justice that witnesses *non numerentur sed ponderentur:* they are not to be numbered but weighed. It is the nature of the human mind, it is the perfection of the human heart, to serve a friend in distress; but in doing so, a man should not transgress the higher calls of religion and morality, the obligations of an oath. We are not monks and recluses, as was said in another place,[1] but come from a class in society that I hope and believe gives us opportunities of seeing as much of the world, and that has as much

[1] *See* JUDICIAL DECISIONS, 2.

Evidence—*continued.*

virtue amongst its members as any other, however elevated.—*Lord Kenyon,* Rex *v.* Rusby (1800), Peake's N. P. Ca. 193.

See 30, *below;* DISCRETION, 9; COUNSEL, 13; JUDGES, 3; JURY, 26; PERJURY; POLITICS, 3; TORT, 25; TRIAL FOR LIFE, 1; WITNESS, 3.

30. Do you imagine that the law supposed that anybody should produce four score witnesses? Two witnesses are enough to prove any fact, if it be a good one, for by the mouth of two witnesses shall a thing be established; and 200 will not prove any fact, if it be a bad one.[1]—*Marlay,* L.C.J. (Ir.), Trial of May Heath (1744), 18 How. St. Tr. 49.

See 29, *above;* JURY, 26.

31. The statement of a living man is not to be disbelieved because there is no corroboration, although in the necessary absence through death of one of the parties to the transaction it is natural that, in considering the statement of the survivor, we should look for corroboration in support of it; but, if the evidence given by the living man brings conviction to the tribunal which has to try the question, then there is no rule of law which prevents that conviction being acted upon.[2]—*Sir J. Hannen, Re* Hodgson; Beckett *v.* Ramsdale (1886), 54 L. T. Rep. (N. S.) 224; L. R. 31 C. D. 177.

See also 10, 11, *above.*

32. Hearsay evidence is always to be received with caution.—*Graham,* B., Berkeley Peerage Case (1811), 4 Camp. 408.

See WITNESS, 1.

33. Concessions made for the purpose of settling the business for which the action is brought, cannot be given in evidence; but facts admitted I have always received.[3]—*Lord Kenyon,* Turner *v.* Railton (1796), 2 Esp. 475.

See ARBITRATION; COMPROMISE; CRIMINAL JUSTICE, 41, 42; DAMAGES, 6; LITIGATION, 3; PARDON, 4.

Evil.

1. Where two evils present, a wise administration, if there be room for

[1] The headnote to Blackman *v.* Bainton (1863), 15 C. B. (N. S.) 432, is quaint: "Twenty-five witnesses and a horse on one side against ten witnesses* on the other. Held, not such a preponderance of 'inconvenience' as to induce the Court to bring back the venue from the place where the cause of action (if any) arose."

[2] *Testis oculatus unus plus valet quam auriti decem:* One eye-witness is worth more than ten ear-witnesses.—4 *Inst.* 279.

[3] Evidence of concessions made for the purpose of settling matters in dispute, I shall never admit; but facts admitted before arbitrators I always shall.—*Lord Kenyon,* Gregory v. Howard (1800), 3 Esp. 113.

* *Multitudinem decem faciunt:* Ten constitute a crowd.—*Co. Litt.* 257. *See also* CRIMINAL JUSTICE, 32.

Evil—*continued.*

an option, will choose the least.[1]—*Foster*, J., Case of Pressing Mariners (1743), 18 How. St. Tr. 1330.

See MISCELLANEOUS, 58.

2. I think the old, sound, and honest maxim that "*you shall not do evil that good may come*," is applicable in law as well as in morals.[2]—*Cockburn*, C.J., Reg. *v.* Hicklin and another (1868), 11 Cox, C. C. 27; *S. C.* 3 L. R. Q. B. 372.
3. Let us never forget the christian maxim "that we should not do evil that good may come of it."—*Crampton*, J., R. *v.* O'Connell (1843), 5 St. Tr. (N. S.) 703.

Executors.

The privilege of executors is too great already. They ought to be properly informed when they bring actions.—*Lord Mansfield*, Hawes *v.* Saunders (1764), 3 Burr. Part IV., p. 1585.

Family.

The family consists of those who live under the same roof with the *pater familias;* those who form (if I may use the expression) his fire-side.—*Lord Kenyon*, C.J., R. *v.* Inhabitants of Darlington (1792), 4 T. R. 800.

See COMPROMISE; HUSBAND AND WIFE, 7; PARENT AND CHILD, 2, *n.*

Feasts.

We take notice of all feasts, and the almanack is part of the common law, the calendar being established by Act of Parliament, and it is published before the Common-prayer Book.—*Holt*, C.J., Brough *v.* Parkings (1703), 2 Raym. 994.

Fiction.

1. A fiction of law shall never be contradicted so as to defeat the end for which it was invented, but for every other purpose it may be contradicted.[3]—*Lord Mansfield*, Mostyn *v.* Fabrigas (1775), Cowp. 161.

[1] Of two evils, the less is always to be chosen.—*Thomas a Kempis*, "Imitation of Christ," Book III., Ch. 12.

Of two evils I have chose the least.—*Prior*, "Imitation of Horace." E duobus malis, minimum eligendum.—*Cicero*, De Officiis.

[2] "And not rather, (as we be slanderously reported, and as some affirm that we say,) *Let us do evil, that good may come?*"—*Romans*, iii., 8.

[3] No fiction shall extend to work an injury, its proper operation being to prevent a mischief or remedy an inconvenience which might result from the general rule of law.—3 *Bla. Com.* (21 ed.) 43. *See also post*, JUDGES, 13, *and references therefrom.*

Fiction—*continued.*

2. Fictions of law must be consistent with justice.[1]—*Maule*, J., Whitaker *v.* Wisbey (1852), 6 Cox, C. C. 111.
3. Fictions are allowed against all the King's subjects for the furtherance, but never for the hindrance, of justice.—*Lord Mansfield*, Lane *v.* Wheat (1780), 1 Doug. 314.
4. When Courts adopt a fiction they must necessarily support it.—*Lord Alvanley*, C.J., Gray *v.* Sidneff (1803), 3 Bos. & Pull. 399.

Foreign Law.

1. The sentences of foreign Courts have always some degree of regard paid to them by the Courts of justice here: and it is very right that an attention should be paid to them, as far as they ought to have weight in the case depending.—*Wilmot*, J., Robinson *v.* Bland (1760), 2 Burr. Part IV., p. 1084.
2. The Judge has not organs to know and to deal with the text of the foreign law, and therefore requires the assistance of a foreign lawyer who knows how to interpret it.[2]—*Lord Brougham*, Sussex Peerage Case, (1844), 11 Cl. & F. 115.
3. To learn what the laws of a country are, is not the work of a day even in pacific times, and to persons accustomed to legal enquiries.—*Lord Stowell*, Ruding *v.* Smith (1821), 1 St. Tr. (N. S.) 1062.

   See LAW, 1; PRACTICE, 1.
4. It is every day's practice with us to decide cases which turn upon the laws of foreign countries, or the laws administered in Courts of peculiar jurisdiction in this country. Of this we have no judicial knowledge; but we acquire the necessary knowledge by evidence.[3]—*Coleridge*, J., Stockdale *v.* Hansard (1837), 3 St. Tr. (N. S.) 932.

   See also CONTRACT, 3; JUDGES, 64; PRACTICE, 1, 26; TORT, 1.
5. Unless Parliament has conferred upon the Court that power in language which is unmistakable, the Court is not to assume that Parliament intended to do that which so seriously affect foreigners who are not resident here, and might give offence to foreign Governments. Unless Parliament has used such plain terms as show that they really intended us to do that, we ought not to do it.—*Lindley*, M.R., *In re* A. B. & Co. (1900), L. R. 1 Q. B. D. [1900], C. A. p. 544. See

[1] *In fictione juris semper æquitas existit:* A legal fiction is always consistent with Equity.—11 *Rep.* 51.

[2] See also Coucha *v.* Murrieta; De Mora *v.* Coucha, L. R. 40 Ch. Div. 543.

[3] *Cuilibet in arte suâ perito est credendum:* Every one who is skilled in his own art is to be believed.—*Co. Litt.* 125.

Auctoritates philosophorum, medicorum, et pœtarum, sunt in causis allegandæ et tenandæ: The opinions of philosophers, physicians, and poets are to be alleged and received in causes.—*Co. Litt.* 264.

Foreign Law—*continued.*

also *Ex parte* Blain, 12 Ch. D. 522; *In re* Pearson (1892), 2 Q. B. 263.

See also CONSTRUCTION, 8; LAW, 22, 44, 49; PARLIAMENT, 13, 14, 17; STATUTES, 15.

Forfeiture.

The King has no interest in this money: he is only Royal trustee for the party.—*Lord Mansfield*, Rex *v.* Eyres (1766), 4 Burr. Part IV. 2119.

See COSTS, 4, 5; SOVEREIGNTY, 2.

Fraud.

1. "Fraud in point of law" is, to my mind, the oddest expression. —*Bramwell*, B., Holland *v.* Russell (1863), 11 W. R. 758.
2. It is fraud in law if a party makes representations which he knows to be false, and injury ensues, although the motives from which the representations proceeded may not have been bad.—*Tindal*, C.J., Foster *v.* Charles (1830), 7 Bing. 105.

   See 8, 12, 13, 16, 27, *below;* LAW, 41; MOTIVES, 1, 8 11; TORT, 16.
3. I do not understand legal fraud. To my mind it has no more meaning than legal heat or legal cold, legal light or legal shade. There never can be a well-founded complaint of legal fraud, or of anything else, except where some duty is shown and correlative right, and some violation of that duty and right.[1]—*Lord Bramwell*, Weir *v.* Bell (1878), 3 Ex. D. 243.

   See 22, 23, 24, *below;* MISCELLANEOUS, 31.
4. No man is bound to presume a fraud.[2]—*Chitty*, J., *In re* Denham and Co., L. R. 25 Ch. 766.

   See RELIEF, 1.
5. It is impossible in a Court of justice to call a particular act a *bonâ fide* act simply because a man says that he did not intend to commit a fraud.—*Jessel*, M.R., *In re* National Funds Assurance Co. (1878), L. R. 10 Ch. 128.

   See 31, *below.*
6. Fraud and deceit abound in these days more than in former times.—*Lord Coke*, Twyne's Case (1602), 3 Co. 80.
7. The Statute of Frauds is a weapon of defence not offence.—*Lord Selborne*, Jervis *v.* Berridge (1873), L. R. 8 Ch. Ap. 360.

[1] But see Derry *v.* Peek, L. R. 14 Ap. Ca. 337; Peek *v.* Derry, L. R. 37 Ch. 541.

[2] *Non decipitur qui scit se decipi:* He is not deceived who knows himself to be deceived.—5 *Co.* 60. Says Lord Hardwicke, L.C.: "There is always fraud presumed or inferred from the circumstances or conditions of the parties contracting: weakness on one side, usury on the other, or extortion or advantage taken of that weakness."—*Earl of Chesterfield* v. *Janssen* (1750), 2 Ves. Sen. 156. On this point, *see also* FRAUD, 9, 10, 16, *above;* MISCELLANEOUS, 10, 19, 47, 58; USURY, 2, *suprà.*

Fraud—*continued.*

8. I must confess to such an abhorrence of fraud in business that I am always most unwilling to come to a conclusion that a fraud has been committed, and I have very strong views with regard to what is the legal definition of fraud. It seems to me that no recklessness of speculation, however great, and that no extortion, however enormous, is fraud. It seems to me that no man ought to be found guilty of fraud unless you can say he had a fraudulent mind and an intention to deceive.—*Brett*, L.J., Wilson *v.* Church (1879), L. R. 13 Ch. 51.

   See 2, 4, *n.*, *above;* 14, 22, 23, 24, 34, *below;* MISCELLANEOUS, 31; MOTIVES, 8.

9. Collusion is not necessary to constitute fraud.—*Buller*, J., Pasley *v.* Freeman (1789), 3 T. R. 51.

   See also 4, *n.*, *above;* 17, *below.*

10. The strongest mind cannot always contend with deceit and falsehood. —*Lord Wynford*, Blackford *v.* Christian (1829), 1 Knapp, 77.

    See MISCELLANEOUS, 10, 31; RELIEF, 1; TITLE, 4.

11. I know of no case where by implication of law the duty of clearing himself from an imputed fraud rests on the defendant.—*Lord Watson*, Cavendish Bentinck *v.* Fenn (1887), L. R. 12 App. Ca. 666.

12. The manner of the transaction was to gild over and conceal the truth; and whenever Courts of law see such attempts made to conceal such wicked deeds they will brush away the cobweb varnish and show the transactions in their true light.—*Wilmot*, C.J., Collins *v.* Blantern (1767), 2 Wils. 349.

    See 2, *above;* 19, *below.*

13. I think that it must in every case depend upon the nature of the transaction, whether the fact not disclosed is such, that it is impliedly represented not to exist; and that must generally be a question of fact proper for a jury.—*Blackburn*, J., Lee *v.* Jones (1864), 17 C. B. (N. S.) 506.

    See 2, *above.*

14. The Court exercises its jurisdiction for the enforcement of the truth, and makes a man's acts square with his words, by compelling him to perform what he has undertaken.[1]—*Sir J. Romilly*, M.R., Laver *v.* Fielder (1862), 32 Beav. 13.

    See CONSTRUCTION, 4; CONTRACT, 2; EQUITY, 38; MISCELLANEOUS, 11; TORT, 16; TRUTH, 8.

[1] Courts of justice are to regard the substance of things on a contract, and not mere words, which might be inaccurately used by the parties in private dealing.—*Per Lord Hardwicke*, L.C., Earl of Chesterfield *v.* Janssen (1750), 2 Ves. Sen. 153.

Fraud—*continued.*

15. The Court never loses the power of unravelling cases of fraud.—*Bacon*, C.J., *Ex parte* McHattie ; *In re* Wood (1878), L. R. 10 C. D. 402.

16. An action cannot be supported for telling a bare naked lie: but that I define to be, saying a thing that is false, knowing or not knowing it to be so, and without any design to injure, cheat, or deceive another person. Every deceit comprehends a lie; but a deceit is more than a lie, on account of the view with which it is practised, its being coupled with some dealing, and the injury which it is calculated to occasion, and does occasion, to another person.[1]—*Buller*, J., Pasley *v.* Freeman (1789), 3 T. R. 56.

See 2, *above ;* TRUTH, 8.

17. Collusion between two persons, to the prejudice and loss of a third, is, in the eye of the Court, the same as a fraud.[2]—*Hardwicke*, L.C., Garth *v.* Cotton (1750), 1 Ves. 524.

See 9, *above ;* 19, *below.*

18. If every untrue statement which produces damage to another would found an action at law, a man might sue his neighbour for any mode of communicating erroneous information, such (for example) as having a conspicuous clock too slow, since plaintiff might thereby be prevented from attending to some duty or acquiring some benefit.—*Lord Denman*, C.J., Barley *v.* Walford (1837), 9 Q. B. 208.

See 27, *below.*

19. It would be an absurdity in law to hold that if a man draws another into a snare, the party suffering should have no remedy by action.—*Heath*, J., Tapp *v.* Lee (1803), 3 Bos. & Pull. 371.

See 5, 8, 12, *above ;* MISCELLANEOUS, 10, 19 ; MOTIVES, 13 ; PROTECTION, 2 ; TITLE, 4 ; TORT, 16.

20. I do not see any sound distinction between the case of money paid in a concern which is *malum in se* and money paid in a concern which is *malum prohibitum.* The latter as well as the former tends to encourage a breach of the law.[3]—*Heath*, J., Aubert *v.* Maze (1801) 1 Bos. & Pull. 374.

See MONEY, 3.

[1] See also *per Lord Kenyon*, *id.* p. 65.

[2] Wherever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it.—*Ashhurst*, J., Lickbarrow *v.* Mason (1786), 6 East, 21. See also 2 T. R. 63 ; 1 H. Bl. 357 ; Collingwood *v.* Berkeley, 15 C. B. (N. S.) 145.

[3] I perfectly agree with my Brother *Heath* in reprobating any distinction between *malum prohibitum* and *malum in se*, and consider it as pregnant with mischief. Every moral man is as much bound to obey the civil law of the land as the law of nature.—*Per Rooke*, J., *id.*, p. 375. *See also post*, MORALS, 3.

Fraud—*continued.*

21. Whatever may be the case in a Court of morals, there is no legal obligation on the vendor to inform the purchaser that he is under a mistake, not induced by the act of the vendor.—*Blackburn*, J., Smith *v.* Hughes (1871), L. R. 6 Q. B. 607.

See MORALS, 3.

22. As no Court has ever attempted to define fraud, so no Court has ever attempted to define undue influence, which includes one of its many varieties.—*Lindley*, L.J., Allcard *v.* Skinner (1887), L. R. 36 Ch. 183.

See 3, *above*; SOVEREIGNTY, 10.

23. Fraud is an extrinsic collateral act which vitiates the most solemn proceedings of Courts of justice. Lord *Coke* says it avoids all judicial acts, ecclesiastical or temporal.—*De Grey*, C.J., Duchess of Kingston's Case (1776), 2 Sm. L. C. 687.

24. "Fraud," in my opinion, is a term that should be reserved for something dishonest and morally wrong, and much mischief is, I think, done, as well as much unnecessary pain inflicted, by its use where "illegality" and "illegal" are the really appropriate expressions.—*Wills*, J., *In re* Companies Acts; *Ex parte* Watson (1888), L. R. 21 Q. B. 309.

See 3, 22, *above.*

25. Secrecy is a mark of Fraud.[1]—*Lord Coke*, Twyne's Case (1602), 3 Co. 80.

26. Fraud is infinite in variety; sometimes it is audacious and unblushing; sometimes it pays a sort of homage to virtue, and then it is modest and retiring; it would be honesty itself if it could only afford it.—*Lord Macnaghten*, Reddaway *v.* Banham (1896), L. R. App. Ca. [1896], p. 221.

See LAW, 23.

27. Fraud may consist as well in the suppression of what is true as in the representation of what is false. If a man professing to answer a question, select those facts only which are likely to give a credit to the person of whom he speaks, and keep back the rest, he is a more artful knave than he who tells a direct falsehood.—*Heath*, J., Tapp *v.* Lee (1803), 3 Bos. & Pull, 371; *Park*, J., Foster *v.* Charles (1830), 4 M. & P. 70.

See 2, 18, *above;* INTERROGATORIES; JUDGES, 48, *n.*; MISCELLANEOUS, 19; TRUTH, 6, 7; WITNESS, 4.

[1] *Id. per Heath*, J., Kidd *v.* Rawlinson (1800), 1 Bos. & Pull. 61. *Fraus est celare fraudem:* It is fraud to conceal fraud.—1 *Vern.* 270.

Fraud—*continued.*

28. Fraud is sometimes mere matter of fact, and sometimes the conclusion of law from facts.—*Lord Mansfield*, Foxcroft *v.* Devonshire (1759), 2 Burr. Part IV. 937.

29. There cannot be a greater Paradox, than that a man should be guilty of a fraud in lending his money with no other prospect but the *chance* of being repaid it.—*Lord Mansfield*, Foxcroft *v.* Devonshire (1759), 2 Burr. Part IV. 941.

See MONEY, 2; PROPERTY, 12.

30. No man shall set up his own iniquity as a defence any more than as a cause of action.[1]—*Lord Mansfield*, Montefiori *v.* Montefiori (1762), 1 Wm. Bl. 363.

31. A man shall not avail himself of an iniquity or blunder of his own. *Allegans turpitudinem suam* shall not be heard.—*Lord Mansfield*, The King and Borough of Portsmouth (1774), Lofft. 553.

See 5, *above*; 33 *below*; CRIMINAL JUSTICE, 51; MISCELLANEOUS, 33.

32. You shall not stipulate for iniquity. All writers upon our law agree in this, no polluted hand shall touch the pure fountains of justice.—*Wilmot*, L.C.J., Collins *v.* Blantern (1767), 2 Wils. 341.

33. No man can avail himself of his own fraud to avoid the law. We have instances even in the criminal law where a man shall not be permitted to avoid the law by fraud.—*Grove*, J., Doe *v.* Carter (1799), 8 T. R. 302.

See 31, *above*; CRIMINAL JUSTICE, 51; PUBLIC POLICY, 7.

34. As to relief against fraud, no invariable rules can be established, Fraud is infinite; and were a Court of equity once to lay down rules, how far they would go, and no farther, in extending their relief against it, or to define strictly the species or evidence of it, the jurisdiction would be cramped and perpetually eluded by new schemes, which the fertility of man's invention would contrive.—*Lord Hardwicke in a letter to Lord Kaims*, quoted by Mr. Justice Story, 1 Story Eq. § 186 n.

See above, 8; MOTIVES, 8; RELIEF, 3.

35. You cannot imply an authority to do an illegal act.—*Jessel*, M.R., *In re* Parker (1882), L. R. 21 C. D. 417.

See LAW, 75; RELIEF, 2.

36. You may discuss the question of legality on legal grounds, but not by an *argumentum ad hominem*.—*Bayley*, J., Trial of Hunt and others (1820), 1 St. Tr. (N. S.) 282.

[1] See also Doe d. Roberts *v.* Roberts, 2 B. & Ald. 367; Wetherell *v.* Jones, 3 B. & Ald. 225.

Freedom of Speech.

The power of communication of thoughts and opinions is the gift of God, and the freedom of it is the source of all science, the first fruits and the ultimate happiness of society; and therefore it seems to follow, that human laws ought not to interpose, nay, cannot interpose, to prevent the communication of sentiments and opinions in voluntary assemblies of men.—*Eyre*, L.C.J., Hardy's Case (1794), 24 How. St. Tr. 206.

See LAW, 70; LIBERTY OF THE PRESS, 9; LIBERTY OF THE SUBJECT, 5; MINORITIES, 2; PARLIAMENT, 6; POLITICS, 8; VOTING.

Freehold.

"None shall be disseised of his freehold" *(Magna Charta)*.—Quoted by *Denison*, J., Rex. *v.* Inhabitants of Aythrop Rooding (1756), Burrow (Settlement Cases), 414.

See LAND.

Gambling.

Gaming in all its forts is too big an evil for the regulation of positive law. Subject it to that, and the event is, you restrain it not at all; but the honest party suffers doubly; and the knave escapes and triumphs. The former loses, he pays; it is a debt of honour: The latter happens to lose, then the condition is changed: I would have taken, if I had won; but now, I'll pay you in law. *This is gaming very high indeed; tends to a monopoly; enhances the price of one of the necessaries of life; and therefore merits all the discouragement we can give it.—Lord Mansfield*, Coote *v.* Thackeray (1773), Lofft. 153.

See also COCK-FIGHTING; COMMERCE, 10, 32; MISCELLANEOUS, 36.

Game.

The game laws are already sufficiently oppressive, and therefore ought not to be extended by implication.—*Willes*, J., Jones *v.* Smart (1785), 1 T. R. 49.

See CONSTRUCTION, 9.

Gazette.

Many people there are in this kingdom who never see a *Gazette* to the day of their deaths, and very mischievous would be the consequences if they were bound by a notice inserted in it.—*Lord Kenyon*, Graham *v.* Hope (1794), 1 Peake, N. P. Ca. 155.

Government.

We know well that the Primitive Church in her greatest purity were but voluntary congregations of believers, submitting themselves to the Apostles, and after to other Pastors, to whom they did minister of their Temporals, as God did move them. So as *Ecclesiasticus*, cap. 17, says, God appointed a Ruler over every people, when he divided nations of the whole Earth. And therefore if a people will refuse all government, it were against the law of God; and yet if a popular State will receive a Monarchy it stands well with the Law of God.—*Hobart*, C.J., Bruton *v.* Morris (1614), Lord Hobart's Rep. 149.

See LAW, 68; LIBEL, 4.

Highway.

No man can make a stable-yard of the King's highway.—*Lord Ellenborough*, Rex *v.* Cross (1812), 3 Camp. 227.

Honesty.

1. An honest blunder in the use of the language is not dishonest.—*Bowen*, L.J., Angus *v.* Clifford (1891), 60 L. J. Rep. (N. S.) C. D. 456.

See MISTAKES, 3.

2. What is honest is not dishonest.[1]—*Bowen*, L.J., Angus *v.* Clifford (1891), 60 L. J. Rep. (N. S.) C. D. 456.

Honours.

Honours ought to come from merit, and from merit alone.—*Lord St. Leonards*, Brownlow *v.* Egerton (1853), 23 L. J. Rep. (N. S.) 415.

See PEERAGE, 1; PUBLIC SERVANT, 4.

Hostility.

Acts of hostility shall be intended matters of force.—*Twisden*, J., Errington *v.* Hirst (1665), Ray. (Sir Thos.) Rep. 125.

See LAW, 7.

Husband and Wife.

1. In the eye of the law no doubt, man and wife are for many purposes one: but that is a strong figurative expression, and cannot be so dealt with as that all the consequences must follow which would result

[1] See *per Lord Blackburn* in Smith *v.* Chadwick, 51 L. J. Rep. Ch. 597; 53 *ibid.* 873; L. R. 20 C. D. 27; 9 Ap. Ca. 187; *per Lord Chancellor* in Arnison *v.* Smith, L. R. 41 C. D. 348; *per Cur.*, Derry *v.* Peek, 58 L. J. Rep. Ch. 864; L. R. 14 App. Ca. 337.

Husband and Wife—*continued.*

from its being literally true.—*Maule*, J., Wenman *v.* Ash (1853), C. B. 844.

See below, 7; MATRIMONY, 2; MISCELLANEOUS, 25.

2. When a woman marries, her husband is the head of the family.—*Parker*, C.J., Inhabitants of St. Katherine *v.* St. George (1714), Fortesc. 218.

3. A woman is to comfort her husband.—*Holt*, C.J., Russell *v.* Corne (1703), 2 Raym. 1032.

See 6, *below*; JUDGES, 2, *n.*

4. If such cruelty shall be sanctioned, and wives shall not be allowed necessaries, England will lose the happy reputation in all foreign kingdoms, which her inhabitants have achieved by their respect for this sex, the most excelling in beauty, which, as in this climate it far transcends that of the women in all other lands, so has this Kingdom surpassed all other countries in its tenderness and consideration for their welfare.—*Per Cur.*[1] Manby *v.* Scott (1672), 1 Levinz, 4; 2 Sm. L. C. (8th ed.) 458.

5. Dissentions existing between man and wife are in all events very unfortunate: when they become the subject of consideration to third persons, they are very unpleasant, and if the case requires that the conduct of each party should be commented upon in public, it is a most painful task to those to whose lot it falls to judge on them. The subject therefore is always to be handled with as much delicacy as it will admit of; but the infirmities of human nature have given rise to cruelties and other ill-treatment on the part of husbands, and to cases in which this Court has thought it indispensably necessary to interpose.—*Buller*, J., Fletcher *v.* Fletcher (1788), 2 Cox, Eq. Cas. 102.

See 8, *below*; CONTEMPT OF COURT, 3, 9; JUDICIAL PROCEEDINGS, 2, 6; MISCELLANEOUS, 53; PROTECTION, 2.

6. By the laws of *England*, by the laws of Christianity, and by the constitution of society, when there is a difference of opinion between husband and wife, it is the duty of the wife to submit to the husband.—*Malins*, V.-C., *In re* Agar-Ellis; Agar-Ellis *v.* Lascelles (1878), L. R. 10 C. D. 55.

See 3, *above.*

7. "The naturalest and first conjunction of two towards the making a further society of continuance, is of the husband and wife, each having care of the family: the man to get, to travel abroad, to defend; the wife to save, to stay at home, and distribute that which is gotten for

[1] *Mallet*, *Twisden*, and *Terrill*, JJ.

Husband and Wife—*continued.*

the nurture of the children and family; is the first and most natural but primate apparence of one of the best kind of commonwealths, where not one always, but sometime, and in some things, another bears a rule; which to maintain, God hath given the man greater wit, better strength, better courage to compel the woman to obey, by reason or force; and to the woman, beauty, fair countenance, and sweet words to make the man obey her again for love. Thus each obeyeth and commandeth the other, and the two together rule the house, so long as they remain together in one." I wish, with all my heart, that the women of this age would learn thus to obey, and thus to command their husbands: so will they want for nothing that is fit, and these kind of flesh-flies shall not suck up or devour their husbands' estates by illegal tricks.[1]—*Hyde*, J., Manby *v.* Scott (1600), 1 Mod. 140.

See above, 1. *See also* FAMILY; PROPERTY, 6; PUBLIC POLICY, 5.

8. There may by possibility be cases where cruelty may lead up directly to the wife's adultery.—*Dr. Lushington*, Dillon *v.* Dillon (1841), 3 Curt. 94.

See 5, *above.*

9. A woman commits adultery in order to gratify her own unlawful passion: she does not think about the annoyance to her husband when she abandons herself to her lover.—*Brett*, M.R., Fearon *v.* Earl of Aylesford (1884), L. R. 14 Q. B. D. 797.

10. If I might be permitted to borrow an illustration from poetry, the distinction between forgiveness and reconciliation is nowhere more strikingly shown than by a poet who, more than most other men, has sounded the depths of human feeling, and who supposes the question put to the husband of an adulteress:

> "Then did you freely, from your heart forgive?"

to which he replies:

> "Sure, as I hope before my Judge to live;
> Sure, as the Saviour died upon the tree
> For all who sin—for that dear wretch and me,
> Whom never more, on earth, will I *forsake* or *see*."
>
> *Crabbe's* "Tales of the Hall," b. 12.

—*Lord Chelmsford*, L.C., Keats *v.* Keats and another (1859), 7 W. R. 378; 5 Jur. (N. S.) Part 1 (1859), p. 178.

[1] This quotation by the learned Judge is from *Sir Thomas Smith's* "Commonwealth of England," Bk. I., c. 11, f. 23.

Husband and Wife—*continued.*

11. When people understand that they *must* live together, except for a very few reasons known to the law, they learn to soften by mutual accommodation that yoke which they know they cannot shake off; they become good husbands, and good wives, from the necessity of remaining husbands and wives; for necessity is a powerful master in teaching the duties which it imposes.[1] If it were once understood, that upon mutual disgust married persons might be legally separated, many couples, who now pass through the world with mutual comfort, with attention to their common offspring and to the moral order of civil society, might have been at this moment living in a state of mutual unkindness—in a stage of estrangement from their common offspring—and in a state of the most licentious and unreserved immorality.—*Sir Wm. Scott*, Evans *v.* Evans (1790), 1 Hagg. Con. Rep. 36, 37.

12. The cock swan is an emblem or representation of an affectionate and true husband to his wife above all other fowls; for the cock swan holdeth himself to one female only, and for this cause nature hath conferred on him a gift beyond all others; that is, to die so joyfully, that he sings sweetly when he dies; upon which the poet saith:

> "*Dulcia defecta modulatur carmina lingua,*
> *Cantator, cygnus, funeris ipse sui, &c.*"

—*Coke*, The Case of Swans (1600), 4 Rep. 85.

13. There is not one of us who cannot recall to memory the experience of some case in which a woman submitted to the worst of treatment, treatment degrading and humiliating, and allowed it to continue rather than permit her name to become the subject of a public scandal.—*Lord Fitzgerald*, G. *v.* M. (1885), L. R. 10 Ap. Ca. 208.

14. The reason why the law will not suffer a wife to be a witness against her husband is to preserve the peace of families.[2]—*Lord Hardwicke*, Barker *v.* Dixie (1735), Ca. *temp.* Lord Hardwicke, 265.

See MARRIED WOMAN.

15. The husband is not liable for the criminal conduct of his wife.[3]—*Wilmot*, J., Lockwood *v.* Coysgarne (1764), 3 Burr. Part IV. 1681.

Illegality.

Illegality is not to be presumed; it is to be alleged and proved when it

[1] *See post*, NECESSITY.

[2] Under the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), the wife or husband of a person charged may be called as a witness in certain cases (s. 4 (1)).

[3] All offences are personal.—*Yates*, J., *id.* 1682.

Illegality—*continued.*

does not appear on the face of the instrument itself.—*Tindal*, C.J., Lord Howden *v.* Simpson (1839), 10 A. & E. 821.

See LAW, 41 ; PRESUMPTION, 3.

Infant.

1. Minority is to give total impunity.—*Sir Wm. Scott*, Beauraine *v.* Beauraine (1808), 1 Hagg. Con. Rep. 499.
2. If an infant commit an assault, or utter slander, God forbid that he should not be answerable for it in a Court of justice.—*Lord Kenyon*, C.J., Jennings *v.* Rundall (1799), 8 T. R. 337.
3. Infants have no privilege to cheat men.—*King*, L.C., Evroy *v.* Nicholas (1733), 2 Eq. Ca. Ab. 489.

See also PARENT AND CHILD, 8.

Inns of Court.

1. The Inns of Court are "voluntary societies, which for ages have submitted to government analogous to that of other seminaries of learning."—*Lord Mansfield*, The King *v.* Benchers of Gray's Inn, (1780), Doug. 354.
2. The *Templers* have no Court of justice within themselves.—*Holt*, C.J., Brown *v.* Burlace (1697), 3 Salk. 45.
3. I hope that the system which has prevailed satisfactorily may long continue; but if ever the Inns of Court should make arbitrary rules for the government of their members, and should enter into a contest for students, by abridging the period of study and relaxing the regulations for the exclusion of improper candidates, it will be necessary for the legislature to interpose, and to establish a uniform and efficient discipline by way of preparation for a profession of such importance to the community.—*Lord Mansfield*, The King *v.* Benchers of Gray's Inn (1780), Doug. 353.

See also UNIVERSITIES, *n.*

Insanity.

1. Hamlet, being charged with "coinage of the brain" answers:

> "It is not madness
> That I have uttered; bring me to the test,
> And I the matter will re-word; which madness
> Would gambol from."

Madness, then, varies and fluctuates: it cannot "re-word"—if the poet's observation be well founded; and though the Court would not

Insanity—*continued.*

at all rely upon it as an authority, yet it knows from the information of a most eminent physician that this test of madness, suggested by this passage, was found, by experiment in a recent case, to be strictly applicable, and discovered the lurking disease.[1]—*Sir John Nicholl*, Groom *v.* Thomas (1829), 2 Hagg. Ecc. Rep. 452, 453.

2. A human creature deprived of reason, and disordered in his senses, is still an animal, or instrument possessing strength and ability to commit violence; but he is no more so than a mere mechanical machine, which, when put in motion, performs its powerful operations on all that comes in its way, without consciousness of its own effects, or responsibility for them. In like manner, the man under the influence of real madness, has properly no will, but does what he is not conscious or sensible he is doing, and therefore cannot be made answerable for any consequences.—*Lord Eskgrove*, Kinloch's Case (1795), 55 How. St. Tr. 1000.

See PUNISHMENT, 2.

International Law.

1. Writers on international law . . . cannot make the law . . . it must have received the assent of the nations who are to be bound by it. This assent may be express . . . or may be implied from established usage.—*Cockburn*, C.J., The Queen *v.* Keyn; "The Franconia" (1876), 2 L. R. Ex. D. 202.
2. International law is part of the common law.—*Pigott*, B., Attorney-General *v.* Sillem and others, "The Alexandra" (1864), 12 W. R. 258.
3. International law, like the moral law, is part of the law of England, but only to the extent that the Courts will not help those that break it.—*Pollock*, C.B., Attorney-General *v.* Sillem and others, "The Alexandra" (1864), 12 W. R. 258.
4. In questions of international law we should not depart from any settled decisions, nor lay down any doctrine inconsistent with them.—*Lord Hatherley*, L.C., Udny *v.* Udny (1869), L. R. 1 Sc. & Div. Ap. Ca. 454.
5. A great part of the law of nations stands upon the usage and practice

[1] The Court was understood to allude to the case referred to in a note to p. 242, of the 10th number of the new series of the *Quarterly Journal of Sciences and the Arts*, London, 1829. "If the tests of insanity are matters of law, the practice of allowing experts to testify what they are should be discontinued; if they are matters of fact, the Judge should no longer testify without being sworn as a witness and showing himself qualified to testify as an expert."—*Doe*, J., State *v.* Pike, 49 New Hamp. Rep. 399; 6 Amer. Rep. 584.

International Law—*continued.*

of nations.[1] It is introduced, indeed, by general principles: but it travels with those general principles only to a certain extent: and, if it stops there, you are not at liberty to go further, and to say, that mere general speculations would bear you out in a further progress—thus, for instance, on mere general principles it is lawful to destroy your enemy; and mere general principles make no great difference as to the manner by which this is to be effected; but the conventional law of mankind, which is evidenced in their practice, does make a distinction, and allows some, and prohibits other, modes of destruction. —*Sir W. Scott*, "The Flad Oyen" (1799), 1 C. Rob. 140.

Interrogatories.

Where a man speaks upon a subject of his own accord, he naturally tells the whole of what he knows; but where he is examined on interrogatories formally administered to him, his answers are naturally confined to the particulars to which he is so interrogated; and as the examining party generally knows beforehand the scope of the witness's evidence, he has an opportunity of so shaping his questions as that they may elicit everything in his favour with which the witness is acquainted, and keep back everything of a contrary tendency.—*Bayley*, J., Berkeley Peerage Case (1811), 4 Camp. 405.

See EVIDENCE, 3; FRAUD, 27; TRUTH, 8.

Intoxication.

1. Men intoxicated are sometimes stunned into sobriety.[2]—*Lord Mansfield*, Rex *v.* Wilkes (1769), 4 Burr. Part IV. 2563.
2. *Qui peccat ebrius; luat sobrius*: Let him who sins when drunk, be punished when sober.[3]—Quoted in Kendrick *v.* Hopkins (1580), Cary's Rep. 133.

See MISCELLANEOUS, 41.

[1] The voluntary law of nations derives its force from the presumed consent of nations, the conventional from their express consent; the consuetudinary from their tacit consent. — *Wolfius*, "Jus Gentium" (*Prolegomena*), § 25.

[2] This *dictum* of Lord Mansfield probably means that if a person is intoxicated by drink or by success or by anything which practically takes away sober reasoning, that anything which startles him will bring it back again. We see the same in ordinary life: any sudden surprise or shock will put a person in full possession of his senses. This seems the most correct interpretation of the *dictum*. Says Coke: "*Homo potest esse habilis et inhabilis diversis temporibus*": A man may be capable and incapable at different times.—5 *Co.* 98.

[3] "(According to our commune proverbe), 'He that kyllyth a man drunk, sobur schal be hangyd.'"—*T. Starkey*, "England in Reign of Henry VIII.," Bk. I., Ch. II. (S. Pole).

Invention.

The invention of an author is a species of property unknown to the common law of England. Its usages are immemorial; and the views of it tend to the benefit and advantage of the public with respect to the necessaries of life, and not to the improvement and graces of mind. —*Yates*, J., Millar *v.* Taylor (1769), 5 Burr. Part IV., p. 2387.

Ireland.

1. A very old author discoursing upon Irishmen, says, "Where Irishmen are good, it is impossible to find better, where they are bad, it is impossible to find worse." I am afraid we have got to this alternative. Treachery was never the character of Irishmen. Courage and intrepidity were their characteristics. Every creature is taught to fight, but boldly and fairly.—*Earl of Clonwell*, L.C.J. (Ir.), Case of Glennan and others (1796), 26 How. St. Tr. 462.
2. God and nature have joined England and Ireland together. It is impossible to separate them.—*Earl of Clonwell*, L.C.J. (Ir.), Case of Glennan and others (1796), 26 How. St. Tr. 460.
3. The common law of England is the common law of Ireland, where the latter is not altered by statute.—*Perrin*, J., Queen *v.* O'Connell (1843), 5 St. Tr. (N. S.) 63.
4. Decisions of the Irish Courts, though entitled to the highest respect, are not binding on English Judges.—*Kay*, J., *In re* Parsons, Stockley *v.* Parsons (1890), L. R. 45 C. D. 62. See also earlier decision of *Lord Esher* in The Queen *v.* Commissioners of Income Tax (1888), L. R. 22 Q. B. D. 306; 58 L. J. Q. B. 199.

Irregularity.

Every irregularity is not erroneous.—*Lord Kenyon*, C.J., Jackson *v.* Hunter (1794), 6 T. R. 74.

See CONSENT, 4; CRIMINAL JUSTICE, 52; MISTAKES; STATUTES, 27.

Judges.

1. Judges are philologists of the highest order.[1]—*Pollock*, C.B., *Ex parte* Davis (1857), 5 W. R. 523.

See 64, *below;* CONSTRUCTION, 2, 4, 8, 16, 19; JUDICIAL PROCEEDINGS, 10; WORDS, 6.

2. Judges, like *Cæsar's* wife, should be above suspicion.[2]—*Bowen*, L.J.,

[1] "The Judge does much better herein, than what a bare grave grammarian, or logician, or other prudent man could do." —*Hale's* "Common Law," Vol. I., (5th ed.) 143.

[2] *Plutarch*, "Life of Cæsar," Ch. 10: "I would have the chastity of my wife clear even of suspicion," replied Cæsar, as his reason for divorcing his wife. *See* HUSBAND AND WIFE, 3.

Judges—*continued.*

Leeson *v.* General Council of Medical Education and Registration (1889), L. R. 43 C. D. 385.

3. What is the obligation upon which we proceed? Upon the solemn sanction of an oath. Take away the reverence for religion, and there is an end at once of that obligation.—*Best*, J., King *v.* Carlile (1821), 1 St. Tr. (N. S.) 1046.

See 76, *below*; EVIDENCE 29; POLITICS, 3.

4. I am willing to put the case into any shape you choose.—*Lord Ellenborough*, Richmond *v.* Heapy and another (1854), 1 Starkie, 204.

See COUNSEL, 7, 14, 16, 18, 25; LAW, 40.

5. Common sense still lingers in *Westminster Hall.*[1]—*Maule*, J., Crosse *v.* Seaman (1851), 11 C. B. 525.

6. To vindicate the policy of the law is no necessary part of the office of a Judge.—*Sir Wm. Scott*, Evans *v.* Evans (1790), 1 Hagg. Con. Rep. 36.

7. Little respect will be paid to our judgments if we overthrow that one day, which we resolved the day before.—*Lord Kenyon*, L.C.J., Rex *v.* Inhabitantes de Haughton (1718), 1 Str. 83.

See CASES, 10; LAW, 29.

8. I can't look to contingencies.—*Lord Kenyon*, Sikes *v.* Marshal (1799), 2 Esp. 707.

9. Our business is to determine of *meum* and *tuum*, where the heats do not run so high, as in things belonging to the legislature.—*Powys*, J., Ashby *v.* White (1703), 2 Raym. 946.

See COURTS, 2; STATUTES, 13.

10. We must go upon general principles.—*Lord Mansfield*, Rex *v.* Cowle (1759), 2 Burr. Part IV. 863.

See below, 11; CASES, 21; LAW, 46.

11. The expressions of every Judge must be taken with reference to the case on which he decides, otherwise the law will get into extreme confusion. That is what we are to look at in all cases. The manner in which he is arguing it, is not the thing; it is the principle he is deciding.—*Best*, C.J., Richardson *v.* Mellish (1824), 2 Bing. 248.

See above, 10; *below*, 70; ADMINISTRATION OF JUSTICE, 8; EVIDENCE, 6; PRACTICE, 4.

12. *Aucupia verborum sunt judice indigna:* Catching at words is

[1] For the Judges of the Court I feel the most sincere respect, esteem and affection. Never have there presided in Westminster Hall magistrates more devotedly anxious to perform in a satisfactory manner the duties of their high office.—*Lord Campbell's Speeches*, 406.

Judges—*continued.*

unworthy of a Judge.—*Lord Hobart*, C.J., Sheffield *v.* Ratcliffe (1616), Hob. 343.

See above, 11; LAW, 25; STATUTES, 10; WORDS, 5.

13. Judges, in their judgments, ought to have a great regard to the generality of the cases of the King's subjects, and to the inconveniences which may ensue thereon, by the one way or the other. Judges, in giving their resolutions in cases depending before them, are to judge of inconveniences as things illegal; and an argument *ab inconvenienti* is very strong to prove that it is against law.—*Hyde*, J., Manby *v.* Scott (1672), 1 Mod. 127.

See also CONSTRUCTION, 23, *n.*; 28, 31; FICTION, 1, *n.*; JUDICIAL PROCEEDINGS, 2, 6; LAW, 36; MISCHIEF, 1, *n.*; STATUTES, 4; TORT, 23; USAGE, 13.

14. If my Lord Chief Justice do commit any person, and set his name to the warrant, he does not use to add to his name "Lord Chief Justice," but he is known to be so, without that addition. The lords do not use to write themselves privy counsellors; they are known to be so, as well as a Judge, who only writes his name and does not use to make the addition of his office.[1]—*Allybone*, J., Trial of the Seven Bishops (1688), 12 How. St. Tr. 210.

15. I am always afraid of quoting my own decisions; I do not think it is the right thing for a judge to do, but I often do refer to them when I can thereby avoid repeating in different words what I have said before.—*Kekewich*, J., Bolton Partners *v.* Lambert (1889), L. R. 41 C. D. 300.

16. Every Judge ought to exercise care, and it is not more needed in one case than in another.[2]—*Sir G. Jessel*, M.R., Smith *v.* Smith (1875), L. R. 20 Eq. Ca. 504.

See below, 17, 60, 67; ADMINISTRATION OF JUSTICE, 2, 15; DELAY, 1; PLEADINGS, 2; PUNISHMENT, 3, *n.*; TIME, 3, *n.*

17. In the hurry of business, the most able Judges are liable to err.—*Lord Kenyon*, C.J., Cotton *v.* Thurland (1793), 5 T. R. 409.

See above, 16; ADMINISTRATION OF JUSTICE, 15; CRIMINAL JUSTICE, 29, *and references therefrom;* STATUTES, 10.

18. For myself I will say that the Judges invite discussion of their acts

[1] The Chief Justice of England is called in old Histories *Capitalis Justicia et prima post Regem in Anglia Justicia.*—*Lamb Eirenarcha*, p. 4, Precedence, &c., of the Judges. *Fortescue*, 395.

[2] *Abundans cautela non nocet:* Extreme care does no mischief. — 11 *Co.* 6. *Festinatio justitiæ est noverca infortunii:* Hasty justice is the stepmother of misfortune.—*Hob.* 97. See also Sir Matthew Hale's precepts: "Things necessary to be continually had in remembrance."—*Hale's* "Common Law," Vol. I. (ed. 1794), p. xix.

Judges—*continued.*

in the administration of the law, and it is a relief to them to see error pointed out, if it is committed.[1]—*Fitzgerald*, J., Reg *v.* Sullivan (1868), 11 Cox, C. C. 57.

See 60, *below;* CONTEMPT OF COURT, 1, 9; JUDICIAL PROCEEDINGS, 7.

19. Vastly inferior as this Court is to the House of Commons, considered as a body in the State, and amenable as its members may be for ill-conduct in their office to its animadversions and certainly are to its impeachment before the Lords, yet, as a Court of law, we know no superior but those Courts which may revise our judgments for error; and in this respect there is no common term of comparison between this Court and the House.[2]—*Coleridge*, J., Stockdale *v.* Hansard (1837), 3 St. Tr. (N. S.) 931.

See below, 37; ADMINISTRATION OF JUSTICE, 20; POLITICS, 4; PROPERTY, 7; TORT, 8.

20. The Judges are totally independent of the ministers that may happen to be, and of the King himself.[3]—*Lord Mansfield*, Proceedings against the Dean of St. Asaph (1783), 21 How. St. Tr. 1040.

See below, 26, *n.*; ADMINISTRATION OF JUSTICE, 21; POLITICS, 4, 6; PUNISHMENT, 6.

[1] In The Protector *v.* Geering (1656), Atkins, *arguendo*, says: "Errors are like Felons and Traytors; any person may discover them, they do *caput gerere lupinum.*"—*Hardres*, 85. It is for the honour of a Court of justice to avoid error in their judgments.—*Dyer*, 201. See also *Hob.* 5.

[2] I have yet to learn that this Court is to be restrained by the dignity or the power of anybody, however exalted, from fearlessly, though respectfully, examining their reasonableness and justice, where the rights of third parties, in litigation before us, depend upon their validity.—*Coleridge*, J., *id. See also antè*, ADMINISTRATION OF JUSTICE, 21, *n.*

[3] *Blackstone* says (1 Comm. 267): "In order to maintain both the dignity and independence of the Judges in the superior Courts, it is enacted by the statute 13 Will. III., c. 2,* that their commissions shall be made not, as formerly,† durante bene placito, but quamdiu bene se gesserint, and their salaries ascertained and established; but that it may be lawful to remove them on the address of both Houses of Parliament. And now, by the noble improvements of that law, in the statute of 1 Geo. III. c. 23, enacted at the earnest recommendation of the King himself from the throne, the Judges are continued in their offices during their good behaviour, notwithstanding any demise of the Crown, (which was formerly held immediately to vacate their seats,) and their full salaries are absolutely secured to them during the continuance of their commissions; His Majesty having been pleased to declare, that 'he looked upon the independence and uprightness of the Judges, as essential to the impartial administration of justice; as one of the best securities of the rights and liberties of his subjects; and as most conducive to the honour of the Crown.'"‡

Blackstone here appears to treat the latter alteration as if it had been a *sacrifice* on the part of George III. of some

* 12 & 13 Will. III. c. 2, s. 3.

† See Whitelock, 16 May, 17; Hutt. i. 132.

‡ See notes of Lord Hardwicke, prepared on moving an address upon His Majesty's Speech, in the 15th vol. of "Parl. Hist." 1011. Also the author's treatise upon the Attorney and Solicitor-General of England (ed. 1897), p. 70.

Judges—*continued.*

21. The act of a single Judge, unless adopted by the Court to which he belongs, is of no validity. As the Courts do not sit in vacation, many things are done by the Judges individually; but their acts, when recognised, become the acts of the Court.—*Lord Alvanley*, Turner *v.* Eyles (1803), 3 Bos. & Pull. 460, 461.

See PRACTICE, 1, 3, 7, 30.

22. I cannot properly give advice to anybody. It is very often supposed Judges can give advice, and I therefore take this public opportunity of saying that a Judge cannot do it.—*Bayley*, J., Trial of Dewhurst and others (1820), 1 St. Tr. (N. S.) 607.

See also below, 81.

23. If we give an opinion, we can't give a judgment: you can't come here for an opinion to us.—*Lord Mansfield*, The King *v.* Inhabitants of the West Riding of Yorkshire (1773), Lofft. 238.

See also PARDON, 3.

24. Many judges have avoided giving extra judicial opinions.[1]—*Heath*, J., Aubert *v.* Maze (1801), 1 Bos. & Pull. 375.

portion of his prerogative in favour of the independence of the Judges; but it is evident that the whole concession was made by the statute of Will. III., and that the provisions of 1 Geo. III. c. 23, in no way interfered with any power of appointment to be exercised by that prince, but that on the contrary the latter statute gave him the power of making Judges of his successors.*

The accession of George III. is continually referred to as the period when the dignity and independence of the Judges of the Superior Courts was legally secured: and the orthodox Blackstone, as we have seen, so lays it down; but the change in the law then made was really to carry out the more important reform effected in the time of William III. The ancient position of the Judges was very precarious. They were subject to removal at any moment if the King thought proper to dismiss them. At the end of the reign of William III. this arbitrary power of the Crown was restrained, and the Judges' commission was described as lasting *quamdiu se bene gesserit*, 12 & 13 Will. III. c. 2, s. 3, but on the accession of Queen Anne the next year, it was found that every one of the Judges' patents required renewal, being voidable by the new Queen: and two of the Judges, Mr. Justice Turton and Mr. Baron Hatsell, with five of the King's Serjeants and three of the King's Counsel, were actually superseded. See Lord Raym. Rep. 769; Thos. Jones' Rep. 43. And on the two next occasions of the demise of the Crown the evil of the system appears to have been felt, every judicial appointment then legally expiring, and its renewal left to depend merely on Court favour. The Act of 1760 (1 Geo. III. c. 23), therefore, which provided that all such commissions should continue notwithstanding the demise of the Crown, was not only in form, but in substance, very important, and George III. seems to have personally taken an interest in the matter, as before it became law His Majesty gave orders for renewing all the patents of the Judges, King's Serjeants, and King's Counsel, without any alteration. See Wynne's "Serjeant-at-Law," p. 348.

* It should not be forgotten that the learned writer of the Commentaries on the Laws of England, who takes so courtly a view of this act of royalty, was Solicitor-General to the Queen, and that he afterwards, from his Commentaries rather than from his conduct on the bench, acquired the name of "the Orthodox Judge."—*Gibbon's* "Decl. and Fall," chap. 44, Vol. VIII. 145 n.

[1] This is an attempt to get the opinion

Judges—*continued.*

25. Certainly the opinion of all the Judges of later times, must have more weight than the extra-judicial opinion of a single Judge at any former time.—*Pratt*, L.C.J., Layer's Case (1722), 16 How. St. Tr. 112.

26. I honour the King; and respect the people[1]: but, many things acquired by the favour of either, are, in my account, objects not worth ambition. I wish popularity, but it is that popularity which follows; not that which is run after. It is that popularity which, sooner or

of the Court extra judicially.—*Denison*, J., Ballard *v.* Bennett (1758), 2 Burr. Part IV., p. 779.

[1] "Fear God, Honour the King."—1 *Peter* ii., 17. *See also suprà*, MISCELLANEOUS, 20.

[2] "My lords, I have heard of those who have expressed more wishes for popularity than ever I felt. I have heard it said, and I think it was in this Court, that they 'would have popularity: but it should be that popularity which follows, not that which is sought after.' My lords, I am proud enough to despise them both. If popularity should offer itself to me, I would speedily take care to kick it away." This was in reference to Lord Mansfield's judgment quoted above. See Horne's address in the Court of King's Bench, 20 How. St. Tr. 785. In 1770, Lord Mansfield supported the Bill for preventing delays of justice by reason of privilege of Parliament, upon which he spoke at considerable length. In the course of his speech, he took occasion again to express a sentiment, which formed a remarkable feature of his character—his contempt of popularity. See his speech reported at length in "Parl. Hist.," Vol. XVI., 977. While Bacon was Chancellor he regularly twice a year before the commencement of each of the two circuits, assembled all the Judges and all the Justices of the Peace that happened to be in London, in the Exchequer Chamber, and lectured them upon their duties, above all admonishing them to uphold the prerogative—"the twelve Judges of the realm, being the twelve lions under Solomon's throne, stoutly to bear it up, and Judges going circuit, being like planets, revolving round the Sovereign as their sun." He warned them against hunting for popularity, saying, "A popular Judge is a deformed thing: and plaudites are fitter for players than for magistrates. Do good to the people; love them, and give them justice; but let it be as the psalm says, 'nihil inde expectantes,' looking for nothing, neither praise nor profit." The Justices he roundly threatened with dismissal if they did not effectually repress faction, "of which ensue infinite inconveniences and perturbations of all good order, and crossing of all good service in Court and country." And he told them he should follow a fine remedy devised by Cicero when consul, a mild one but an apt one: Eos qui otium perturbant reddam otiosos. *Speech in the Star Chamber before the Summer Circuits* (1617).—*Bacon's Works*, Vol. VI., 141, 194, 244. In swearing in new Judges, he delivered most excellent advice to them, which should be kept in remembrance by all their successors. Thus he counsels Justice Hutton, when called to be a Judge of the Common Pleas:

"Draw your learning out of your books, not out of your brain.

Mix well the freedom of your opinion with the reverence of the opinion of your fellows.

Continue the studying of your books, and do not spend on upon the old stock.

Fear no man's face, yet turn not stoutness into bravery.

Be a light to Jurors to open their eyes, not a guide to lead them by the noses.

Affect not the opinion of pregnancy and expedition by an impatient and catching hearing of the counsellors at the bar.

Let your speech be with gravity, as one of the sages of the law, and not talkative, nor with impertinent flying out to show learning.*

Contain the jurisdiction of your Court within the ancient mere-stones, without removing the mark."†

—*Bacon's Works*, Vol. IV., 497.

* *See antè*, COUNSEL, 13, *n.*

† Quoted by Sir R. Atkyns in Rex *v.* Williams (1695), 13 How. St. Tr. 1430. *See also* JURISDICTION, 5, *suprà*.

Judges—*continued.*

later, never fails to do justice to the pursuit of noble ends, by noble means. I will not do that which my conscience tells me is wrong, upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press: I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels; all that falsehood and malice can invent, or the credulity of a deluded populace can swallow.[1] I can say, with a great magistrate, upon an occasion and under circumstances not unlike, "Ego hoc animo semper fui, ut invidiam virtute partam, gloriam, haud infamiam, putarem."[2]—*Lord Mansfield*, Case of John Wilkes (1763), 19 How. St. Tr. 1112, 1113; *S. C.* 4 Burr. Part IV. 2562.

See also below, 45, *n.*; 76; ADMINISTRATION OF JUSTICE, 20; JURY, 15.

27. *Sachez le vous qe nous ne froms nul tort a nul, pur vous ne pur altre:* Know you this, that we will do no wrong to any one, neither for you nor for any one else.—*Berrewik*, J., Henry Le Moys *v.* A. (1302), Y.B. 30 & 31 Ed. I., p. 158.

See above, 20; ADMINISTRATION OF JUSTICE, 34, 35; LAW, 19; POLITICS, 3; PROTECTION, 2; PUNISHMENT, 6; TORT, 6.

[1] Jealousy of leaving the law to the Court, as in other cases, so in the case of libels, is now, in the present state of things, puerile rant and declamation. The Judges are totally independent of the ministers that may happen to be, and of the King himself. (*See* Lord Mansfield's judgment in *Proceedings against the Dean of St. Asaph*, quoted above, *antè*, JUDGES, 20.) Their temptation is rather to the popularity of the day. But I agree with the observation cited by Mr. Cowper from Mr. *Justice* Forster "that a *popular* Judge is an odious and a pernicious character."—*Lord Mansfield*, King *v.* Shipley (1784), 3 Doug. 170.

[2] It is to be observed that to the quotation from Cicero, "Ego hoc animo," &c., Mr. Serjeant Hill in his copy of Burrow had written as a note the following passage of Swift: "The world will never allow any man that character which he gives to himself by openly professing it to those with whom he converseth. (*See antè*, CHARACTER, 6.) Wit, learning, valour, acquaintance, the esteem of good men, will be known although we should endeavour to conceal them, however they may pass unrewarded: but I doubt our own bare assertions upon any of these points, will be of very little avail, except in tempting the hearers to judge directly contrary to what we advance."—4 *Burrow*, 2562—2563. Taken with Bacon's address to Mr. Justice Hutton, the following advice to the Judges by Coke will prove appropriate (see 4 *Inst.*, Epilogue):

"Fear not to do right to all, and to deliver your verdicts justly according to the laws; for feare is nothing but a betraying of the succours that reason should afford: and if you shall sincerely execute justice, be assured of three things:

1. Though some may maligne you, yet God will give you his blessing.
2. That though thereby you may offend great men, and favourites, yet you shall have the favourable kindness of the Almighty, and be his favourites.
3. And lastly, that in so doing, against all scandalous complaints, and pregmatical devices against you, God will defend you as with a shield: 'For thou, Lord, wilt give a blessing unto the righteous, and with thy favourable kindnesse wilt thou defend him, as with a shield.'" (see Psalm v., 12). *See also* JUDGES, 82, *n.*, *suprà*, and Sir Matthew Hale's precepts: "Things necessary to be

Judges—*continued.*

28. As long as we have to administer the law we must do so according to the law as it is. We are not here to make the law.—*Lord Coleridge*, C.J., Reg *v.* Solomons (1890), 17 Cox, C. C. 93.

See 31, *below;* LAW, 22; PARLIAMENT, 13; STATUTES, 9.

29. We are sitting in a Court of law, and are bound to give a legal decision.—*Grose*, J., Doe *v.* Staple (1788), 2 T. R. 700.

See ADMINISTRATION OF JUSTICE, 18, *and references therefrom;* CHANCERY, 9; PROPERTY, 7.

30. For God's sake, do not put us on making law.—*Keating*, L.C.J., Case of John Price and others (1689), 12 How. St. Tr. 625.

31. We cannot make laws.—*Holt*, C.J., Reg. *v.* Nash (1703), 2 Raym. 990; *Powell*, J., Queen *v.* Read (1706), Fortesc. 99.

See STATUTES, 13.

32. We cannot make a law, we must go according to the law. That must be our rule and direction.—*Holt*, C.J., Parkyns' Case (1696), 13 How. St. Tr. 72.

See 28, *above.*

33. Our duty is simply to administer the law as we find it.—*Grove*, J., Scaltock *v.* Hartson (1875), L. R. 1 Com. Pl. 109.

See LAW, 49; PARDON, 2; PARLIAMENT, 12, 13, 14.

34. A Judge has nothing to do but to administer the law as he finds it.[2]—*Jessel*, M.R., Bunting *v.* Sargent (1879), L. R. 13 C. D. 335.

See 28, 33, *above;* CONSTRUCTION, 28; COUNSEL, 20; LAW, 40, 71.

35. The Judges do not make the law; they administer it, and that however much they may disapprove or dislike it.[3]—*Lopes*, L.J., The Queen *v.* Bishop of London (1889), L. R. 24 Q. B. 246.

See LAW, 29; STATUTES, 17, 18, 19.

36. A Judge cannot set himself above the law which he has to administer, or make or mould it to suit the exigencies of a particular

continually held in remembrance."—*Hale's* "Common Law," Vol. I. (ed. 1794), p. xix.

[1] *Judicis est jus dicere non dare:* It is for the Judge to administer, not to make laws.—*Lofft.* 42.

[2] It is the duty of the Judge to decide according to law.—*Jessel*, M.R., Smith *v.* Day (1882), L. R. 21 C. D. 431. See also *per Vaughan Williams*, J., *In re* Macdonald, Sons & Co. (1893), L. R. 1 Ap. Ca. [1894], p. 102: *do., per Stirling*, J., *In re* Horlock (1895), L. R. 1 C. D. [1895], p. 522; *do., per Sir F. H. Jeune*, In the goods of Huber (1896), L. R. Pro. D. [1896], p. 211.

Though in many other countries everything is left in the breast of the Judge to determine, yet with us he is only to *declare* and *pronounce*, not to *make* or *new-model*, the law.—*Sir Wm. Blackstone* (1765), Com. Bk. III., Ch. 25, p. 335.

[3] We have to administer the law whether we like it or no.—*Lord Coleridge*, Reg. *v.* Ramsey (1886), 1 Cab. & Ellis' Q. B. D. Rep. 148.

Judges—*continued.*

occasion.—*Cockburn*, C.J., Martin *v.* Mackonochie (1878), L. R. 3 Q. B. 775.

See 44, 62, 66, 69, *below;* ADMINISTRATION OF JUSTICE, 20; LAW, 40; STATUTES, 7.

37. The cause is before us; we are sworn to decide it according to our notions of the law; we do not bring it here; and, being here, a necessity is laid upon us to deliver judgment; that judgment we can receive at the dictation of no power: we may decide the case erroneously; but we cannot be guilty of any contempt in deciding it according to our consciences.—*Coleridge*, J., Stockdale *v.* Hansard (1837), 3 St. Tr (N. S.) 945.

See 16, 17, 19, 20, *above;* 41, 60, *below;* LAW, 29, 30, 59; PARDON, 2; POLITICS, 3; PROPERTY, 7; PUNISHMENT, 6; RIGHTS, 4; TORT, 8.

38. If I am to pronounce a judgment at all in this or in any other case, it must and shall be the judgment of my own mind, applying the law of the land as I understand it according to the best of my abilities, and with regard to the oath which I have taken to administer justice truly and impartially.—*Littledale*, J., Stockdale *v.* Hansard (1837), 3 St. Tr. (N. S.) 911.

See below, 61; ADMINISTRATION OF JUSTICE, 10, 28; JUSTICE, 3; LAW, 30; STATUTES, 13.

39. I commend the Judge that seems fine and ingenious, so it tend to right and equity. And I condemn them, that either out of pleasure to shew a subtil wit will destroy, or out of incuriousness or negligence will not labour to support the act of the party by the art or act of the law.—*Lord Hobart*, Pits *v.* James (1614), Hob. Rep. 125.

40. We do not conceive the law, but we know the law.—*Popham*, C.J., Trial of Sir Walter Raleigh (1603), 2 How. St. Tr. 18.

41. I must lay down the law as I understand it, and as I read it in books of authority.[1]—*Lord Coleridge*, Reg. *v.* Ramsey (1883), 1 Cab. & Ellis' Q. B. D. Rep. 136.

See above, 37; *below*, 43, 66; LAW, 1, 43.

42. I am bound by my oath to abide by the law, and I cannot suffer anybody to derogate from it.—*Rooke*, J., Redhead *alias* Yorke's Case (1795), 25 How. St. Tr. 1083.

See JUSTICE, 2; STATUTES, 19.

[1] "I will consider it upon the *Precedents;* upon the circumstances of *this* case; and upon the *Reason* of the thing." —*Lord Mansfield*, Rex *v.* Corporation of Wigan (1758), 2 Burr. Part. IV., p. 784.

Judges—*continued.*

43. We cannot alter the law, we are bound by our oaths to proceed according to the law as it is at present.—*Holt*, C.J., Parkyns' Case (1696), 13 How. St. Tr. 73.

See above, 41.

44. We must not be guilty of taking the law into our own hands, and converting it from what it really is to what we think it ought to be.—*Lord Coleridge*, Reg. *v.* Ramsey (1883), 1 Cab. & Ellis' Q. B. D. Rep. 136.

See 36, *above;* 64, 69, *below;* DISCRETION, 12; LAW, 10, 40; MISCELLANEOUS, 23; STATUTES, 13.

45. Give your judgments, but give no reasons.[1]—*Lord Mansfield.*

See 48, *below;* JUDGES, 26, *n.*; PARLIAMENT, 5, *n.*

46. If no reason had been given, the authority might have had more weight: but, to be sure, the reason is a false one.—*Lord Mansfield*, Ingle *v.* Wordsworth (1761), 3 Burr. Part IV. 1286.

See MISCELLANEOUS, 24; STATUTES, 8, 11.

47. Reasons of public benefit and convenience weigh greatly with me.—*Lord Hardwicke*, Lawton *v.* Lawton (1743), 3 Atk. 16.

See COUNSEL, 13; EQUITY, 33, 36; LIMITATION, 1; STATUTES, 13.

48. As a rule, Judges give reasons, though in many of the old cases the

[1] This is a well-known anecdote of Lord Mansfield: "A person who had been appointed to a Judgeship in some distant part of the Empire, applied to his lordship for advice how to act, as he was totally ignorant of the law. Give your judgments, said Lord Mansfield, but give no reasons. As you are a man of integrity, sound sense, and information, it is more than an even chance that your judgments will be right; but as you are ignorant of the law, it is ten to one that your reasons will be wrong."—See *Case of Benjamin Flower* (1799), 27 How. St. Tr. 1060. According to Lord Campbell, "Chancellor Michael De La Pole did not at first resort to the expedient of handing over the seal to a legal keeper to act as his judicial deputy; and as he is said to have performed well in the Court of Chancery, he must have been like some of the military Chancellors in our West India Islands, who by discretion, natural good sense, taking hints from the clerks in Court, *and giving no reasons for their decrees* (according to the advice of Lord Mansfield to a military man going to Jamaica to sit as Chancellor) have very creditably performed the duties of their office."—*Lives of Ld. Chanc.*, Vol. I., 3rd ed. 28. See also *per Coke*, L. C.J.

"Wise and learned men do before they judge, labour to reach to the depth of all the reasons of the case in question, but in their judgments express not any: and in troth if Judges should set down the reasons and causes of their judgments within every record, that immense labour should withdraw them from the necessary services of the commonwealth, and their records should grow to be like *Elephantini libri* of infinite length, and in mine opinion lose somewhat of their present authority and reverence; and this is also worthy for learned and grave men to imitate. But mine advice is, that whensoever a man is enforced to yield a reason of his opinion or judgment, that then he set down all authorities, precedents, reasons, arguments and inferences whatsoever that may be probably applied to the case in question; for some will be persuaded or drawn by one, and some by another, according as the capacity or understanding of the hearer or reader is."—2 *Rep.* vi.

Judices non tenentur exprimere causam sententiæ suæ: Judges are not bound to explain the reason of their sentence.—*Jenk. Cent.* 75.

Judges—*continued.*

Judges gave no reasons[1]; but where no reasons are given for a particular decision, it becomes extremely difficult for a Judge to follow it, because he does not know the principle on which the decision proceeded.—*Jessel*, M.R., *In re* Merceron (1877), L. R. 7 C. D. 187.

See 45, *above;* 52, 54, 56, *n.*, *below;* APPEALS, 6; CASES, 9, 21; MOTIVES, 9.

[1] That this is so, is undeniable. Lord Chief Justice Holt was no less a staunch upholder of the opinion that Judges should give no reasons—except in "unusual" cases—than was that great Judge, Lord Mansfield, after him. (*See note* 1 under PARLIAMENT, No. 5, *post*), and as exemplied in the following case: "The subject being unusual, I fear that I shall not make myself intelligible, but I will do my endeavour, that the reasons of our judgment may be apprehended."—*Holt*, C.J., R. *v.* Knight and Burton (1699), 1 Raym. 527. As to Lord Mansfield, nothing could induce him to depart from what seems to have been his well-established custom. *Buller*, J., speaking of him in the case of Bell *v.* Gilson (1798), (2 Bos. & Pull. 354), says: "I never could get him (*i.e.*, Lord Mansfield) to reason."

The last safeguard of the justice and accuracy of judicial decisions consists in the rule that *decisions and the reasons of them ought to be delivered publicly.* In all judgments of importance, the Judges declare the reasons on which their conclusions are founded; and where the Judges of a Court are not unanimous in a particular judgment, it is usual for them to deliver their reasons *seriatim.* This course is adopted in the House of Lords, and the Courts of law and equity; but a different rule is adopted in the Judicial Committee of the Privy Council, where, if any difference of opinion arise among the members, the sentiments of the minority are not divulged; but the reasons of the decision are invariably stated at length by one of the members of the Committee, and are usually embodied in a written judgment. (See Macqueen, "Appellate Jurisdiction," 717.) Similarly the Courts of civil law allow debates among the Judges to be private among themselves. (8 St. Tr. 434.) Adverting to the importance of public judgments in criminal cases, *Lord Mansfield* has observed (Case of John Wilkes, 19 St. Tr. 1098): "It is not only a justice due to the Crown and the party, in every criminal cause where doubts arise, to weigh well the grounds and reasons of the judgment; but it is of great consequence to explain them with accuracy and precision in open Court, especially if the questions be of a general tendency, and upon topics never before fully considered and settled, that the criminal law of the land may be certain and known." (*See below*, 52; PRECEDENTS, 20.) Of old time, before Edward III., the reasons for judgments at law used to be entered on the record in cases of difficulty, but ever afterwards were constantly pronounced by the Court, that they might be entered in the books of Cases and Reports. If the practice were otherwise, it has been well observed: "No man could have known what the law of England is, for the Year-books and reports are nothing but a relation of what is said by the counsel and Judges in giving judgment, and contain the reasons of the judgment, which are rarely expressed in the record of the judgment; and it is as much the duty of a Judge to give the reasons why he doubts, as it is of him who is satisfied in the judgment. Men sometimes will be ashamed to offer those reasons in public, which they may pretend, satisfy them, if concealed; besides, we have a maxim in law undeniable, and of great use, that any person whatever may rectify or inform a Court or Judge publicly or privately, as *Amicus Curiæ*, a friend to the Court, or a friend to justice: but can that be done, if the standers-by know not the reason upon which the Court pronounce their judgment? . . . If a man swears what is true, not knowing it to be true, though it be logically a truth as it is distinguished, yet it is morally a lye; and if a Judge give judgment according to law, not knowing it to be so, as if he did not know the reason of it at that time, but bethought himself of a reason for it afterwards, though the judgment must be legal, yet the pronouncing of it is unjust. Judges ought not to be bound up by the

Judges—*continued.*

49. One does not like to differ from a man without knowing the reasons which influenced him.—*Lindley*, L.J., *Ex parte* Strawbridge; *In re* Hickman (1883), L. R. 25 C. D. 276.

See 54, *below;* APPEALS, 2; MINORITIES, 2.

50. Let us consider the reason of the case. For nothing is law that is not reason.—*Powell*, J., Coggs *v.* Barnard (1703), 2 Ray. 911.

See CASES, 10.

51. I believe that an experienced lawyer may be, as it were, instinctively right without at the moment being able to give a good reason for his opinion.—*Lord Bramwell*, Mills *v.* Armstrong (1888), 57 L. J. P. C. Cas. 70.

See also COUNSEL, 12, 13.

52. I never give a judicial opinion upon any point, until I think I am master of every material argument and authority relative to it. It is not only a justice due to the Crown and the party, in every criminal cause where doubts arise, to weigh well the grounds and reasons of the judgment; but it is of great consequence, to explain them with accuracy and precision, in open Court; especially if the questions be of a general tendency, and upon topics never before fully considered and settled; that the criminal law of the land may be certain and known.[1]—*Lord Mansfield*, Wilkes' Case (1769), 4 Burr. Part IV., 2549; 19 How. St. Tr. 1098.

See above, 48, *n.*; ADMINISTRATION OF JUSTICE, 10; CRIMINAL JUSTICE, 37; EVIDENCE, 11; POLITICS, 3.

53. My brothers[2] differ from me in opinion, and they all differ from one another in the reasons of their opinion; but notwithstanding their

reasons given in public, and not satisfy or make good their judgment by afterthought of reasons."—*Remarks on the Trial of Fitzharris*, in 33 Car. II. (1681), by Sir John Hawkes, Solicitor-General to William III. (8 St. Tr. 434), referring to the atrocious trials for high treason in the latter part of the reign of Charles II., and the practice which the corrupt Judges who were concerned in those trials introduced of delivering their judgments without stating their reasons. (On this subject *see further antè*, FRAUD, 27; JURY, 25.) Burnet, referring to the great *Quo Warranto* case in this reign, says: "The Judges were wont formerly, in delivering their opinions, to make long arguments, in which they set forth the grounds of law on which they went, which were great instructions to the students and barristers; but that had been laid aside ever since Hale's time."—*Hist. of his own Times*, (A.D. 1682). *See further* on this subject, *note* to LAW REPORTS, 3, *suprà; see also antè*, COUNSEL, 15.

[1] The Court will not keep back their opinion without having sufficient ground for doubting, and a necessity of taking time to satisfy their doubts: on the other hand, they will not give their opinions over-hastily and prematurely, merely to gratify the humours or passions of mankind.—*Aston*, J., *id.* p. 1097.

[2] The Judges formerly were always chosen from the order of Serjeants-at-Law (Fort. *De Laud.* c. 1, p. 116; Coke's 4 Inst. 75, 100; Preface to 10 Co. Rep. 24; 2 Rot. Parl. 331 b.), and where no special character of brotherhood existed, as in their case, "brother" would naturally be

Judges—*continued.*

opinion, I think the plaintiff ought to recover, and that this action is well maintainable and ought to lie. I will consider their reasons.[1]—*Holt*, C.J., Ashby *v.* White (1703), 2 Raym. 950.

See also 26, *n.*; 48, *n.*; 52, *n.*, *above*; POLITICS, 3.

considered a term of condescension used by a superior to an inferior. The second chapter of Oughton's *Prolegomena* concludes as follows: "XLI. Bright therefore be its glory, and may succeeding ages be illumined, far and wide, with the beams of this fostering, this renowned, this most worshipful—Arches Court of Canterbury." In the controversy between the serjeants and doctors of civil law for precedence at the coronation of James I., the latter urged their right of *sitting* with the Judge, as evidencing their superiority to serjeants, who plead *standing*. "Et doctores sedendi cum judice potestatem habent, nisi hiis horis quibus merita causarum pandantur." They also said that in their Courts a Judge is punishable who addresses a doctor as *frater*, and not as *dominus*. Ough. Ordo Judiciorum, in Foro Ecclesiastico-civili. *Prolegomena*, cap. 2, *tit.* Advocates in Ecclesiastical Courts. See also Spelman, *Gloss. voce* "Serjeant." The serjeants derived their title from the old Knights Templars, amongst whom there existed a peculiar class under the denomination of "frères sergens," or *fratres servientes;* wherefore amongst all the serjeants the practice was and still is to address each other by the familiar epithet of "brother."—*Cowel*, Addison's Knight Templars, 318.

[1] In 1 *Bl. Com.* 18, Professor Christian has the following note: "Here it may not be improper to observe that there is no casting vote in Courts of justice; but in the superior Courts, if the Judges are equally divided, there is no decision, and the cause is continued in Court till a majority concur. At the sessions the justices, in case of equality, ought to respite the matter till the next sessions; but if they are equal one day, and the matter is duly brought before them another day in the same sessions, and if there is then an inequality, it will amount to a judgment; for all the time of the sessions is considered but as one day. A casting vote sometimes signifies the single vote of a person, who never votes but in the case of an equality; sometimes the double vote of a person who first votes with the rest, and then upon an equality creates a majority by giving a second vote." A casting vote neither exists in corporations nor elsewhere, unless it is expressly given by statute or charter, or, what is equivalent, exists by immemorial usage; and in such cases it cannot be created by a bye-law. (R. *v.* Ginever, 6 T. R. 732.) And see R. *v.* Bumstead, 2 B. & Ad. 704.

If the Judges are equally divided in the superior Courts, and the question in dispute has received a decision at Nisi Prius, that decision will stand, as in Laugher *v.* Pointer (5 B. & C. 547) there was a non-suit, and the Court above being equally divided after argument on showing cause against a rule for a new trial, the rule was discharged. So in Strother *v.* Barr (5 Bing. 136), which was an action upon the case for an injury to the reversion, the question was, whether there was sufficient evidence of the plaintiff's having a reversionary interest; and leave was reserved to set aside the verdict: and in the recent case of *Doe* d. Mudd *v.* Suckermore (5 A. & E. 703), in which a rule nisi for a new trial had been obtained on the ground of an improper rejection of evidence: in each case the Court being equally divided after cause shown, the rule was discharged. So, in the case of an appeal from an order of two magistrates to the quarter sessions, if the magistrates there assembled are equally divided upon the subject-matter of the appeal, it would seem that the order of the two justices would stand. In election committees of the House of Commons, as constituted by the Grenville Act, 10 Geo. III. c. 16, the chairman by sect. 27 had a casting voice, if the voices were equal; and the number of members on the committee being not more than fifteen nor less than thirteen, it might be necessary, in order to create a majority, that the chairman should give a double vote in some cases, and a single vote in others; so that he would have a casting voice in both of the significations above mentioned. By sect. 77 of the 2 & 3 Vict. c. 38, for amending the jurisdiction for the trial of election petitions, it is specifically enacted, that "whenever the

Judges—*continued.*

54. As I find that my brothers[1] are of a different opinion from me, I submit to their authority.[2]—*Eyre*, L.C.J., Brandon *v.* Pate (1794), 2 H. B. 311.

See also 48, 49, 53, *above, and* 55, *below.*

55. I am so unfortunate as to differ a second time from my brethren, but I am bound by my opinion, and it is my duty to deliver it.[4]—*Eyre*, L.C.J., Bencough *v.* Rossiter (1795), 2 H. B. 426.

See note to 54, *above.*

56. You shall have my judgment presently; but my brothers[5] are to speak first.[6]—*Wright*, L.C.J., Case of the Seven Bishops (1688), 12 How. St. Tr. 274.

See also note to 53, *above.*

voices shall be equal, the chairman shall have a *second*, or casting vote."

[1] *See antè*, JUDGES, 53, *n.*, for meaning of the term "brother."

See also to the same effect *per Holt*, C.J.: "My judgment ought to be given for the plaintiff: but my brothers are all of another opinion, and so I submit to it. The defendant must have his judgment." Philips *v.* Bury (1788), 2 T. R. 358; *per Grose*, J.: "For the sake of general convenience, I am not sorry that the rest of the Court are of a contrary opinion." Read *v.* Brookman (1789), 3 T. R. 162, and *per Rooke*, J.: "Whatever doubts I had, I submit to the authority of the other Judges." Mitchell *v.* Cockburne (1794), 2 H. B. 382. (*Eyre*, L.C.J., however, subsequently delivered a different *dictum*, *see* 55 *above*). See also *per Lord Fitzgerald* in Caird *v.* Sime (1887), L. R. 12 App. Ca. 359: "In the course which the case is now about to take my opinion becomes worthless. I am bound to assume that I am wrong in point of law. Your lordships' judgment settles the law finally, and in yielding a willing obedience I have, at least, the palliation for mistake in law that I have erred in company with the Lord President, the Lord Justice Clerk, and four other able and eminent Scotch Judges."

[3] The term "brethren" is explained *antè*, JUDGES, 53, *n.*

[4] "This is the first instance of a *final* difference of opinion in this Court since I sat here. Every Order, Rule, Judgment, and Opinion has hitherto been *unanimous*. That unanimity never could have happened if we did not among ourselves communicate our sentiments with great freedom; if we did not form our judgments without any prepossession to first thoughts; if we were not always open to conviction, and ready to yield to each other's reasons. We have all equally endeavoured at that unanimity, upon this occasion: we have talked the matter over several times. I have communicated my thoughts at large in writing: and I have read the three arguments which have been now delivered. In short, we have equally tried to convince or be convinced: but, in vain. We continue to differ. And whoever is right, *each* is bound to abide by and deliver *that* opinion which he has formed upon the fullest examination.* —*Lord Mansfield*, Millar *v.* Taylor (1769), 4 Burr. Part IV. 2395.

[5] See the term "brother" explained *antè*, JUDGES, 53, *n.*

[6] The Judges proceed to give their opinions *seriatim*, beginning from the

* Says Sir James Burrow: Except in this and one other case now depending (by writ of error) in the House of Lords, where Mr. Justice Yates differed from the other three, every rule, order, judgment, and opinion has, to this day, been (as far as I can recollect) unanimous. This gives weight and dispatch to the decisions, certainty to the law, and infinite satisfaction to the suitors: and the effect is seen by that immense business which flows from all parts into this channel; and which we who have long known Westminster Hall, behold with astonishment; the rather, as during this period, all the other Courts have been filled with Judges of unquestionable integrity, eminent talents, and distinguished abilities. Ed. note, *id.* 2395.

Judges—*continued.*

57. To be sure, it is a very important case, though very imperfectly reported in the printed cases, which make an impossibility, by making the senior Judge speak first.—*Lord Mansfield*, Morgan *v.* Jones (1773), Lofft. 167.

58. Whenever there is a real likelihood that the Judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act, and we are not to be understood to say that where there is a real bias of this sort this Court would not interfere.—*Blackburn*, J., Reg. *v.* Rand (1867), L. R. 1 Q. B. 230.

See below, 61, 82; ADMINISTRATION OF JUSTICE, 28, 29; JURY, 25.

59. *Pur dishonest Judgm't Judges povent estre punv. Mirror de Justices report que 44 fueront pendus pur cest cause:* For dishonest judgment Judges may be punished. Mirror of Justices reports that 44 were hanged for this cause.—*Vaughan*, J., Bushel's Case (1670), Jones's (Sir Thos.) Rep. 15.

60. If I was wrong, I should think it more honourable to acknowledge and rectify any error that I should have committed, than to justify and defend it.—*Lord Mansfield*, Rex *v.* Wilkes (1770), 4 Burr. Part IV. 2532.

See 18, *above, and references therefrom; below*, 67; PRACTICE, 21.

61. I think that it is a matter of public policy that, so far as is possible, judicial proceedings shall not only be free from actual bias or prejudice of the Judges, but that they shall be free from the suspicion of bias or prejudice.—*Fry*, L.J., Leeson *v.* General Council of Medical Education, &c. (1889), L. R. 43 C. D. 390.

See above, 38, 58; ADMINISTRATION OF JUSTICE, 28, 29; JUDICIAL PROCEEDINGS, 6, 7.

62. It is impossible for us English lawyers, dealing with the English language, to express our views except in the technical language of our law.—*Kekewich*, J., Lauri *v.* Renad (1892), L. R. 3 C. D. [1892], p. 413.

See above, 36; ADMINISTRATION OF JUSTICE, 11; CASES, 15; LAW, 65; STATUTES, 6; WILL, 8; WORDS, 6.

junior.—*The Grand Opinion, &c., concerning the Royal Family* (1717), Fortesc. 410. Again, "The Judges delivered their opinions separately, and at large; the junior Judge beginning, and so proceeding upward to the Lord Chief Justice."—See Millar *v.* Taylor (1769), 4 Burr. 2309. "I believe it is understood that though, when the Judges are unanimous, the Chief Justice delivers the opinion of the Court, yet the other justices are not presumed to adopt and concur with every doctrine that falls from him, in the course of that opinion."—*Douglas on Elections* (ed. 1775), Introd. p. 39.

An Ordinance of the Privy Council of 1627, forbade Privy Councillors divulging "how the particular voices and opinions went." Lord Cairns in February, 1878, passed a fresh Ordinance applying the Order of 1627 expressly to judicial business. *See also* 48, *above, and references there given.*

Judges—*continued.*

63. Judges are not bound to travel beyond the facts stated in cases, and, as a general rule, such a practice would be inconvenient.—*Day*, J., Durham County Council *v.* Chester-le-Street Union (1890), 60 L. J. Rep. (N. S.) Mag. Cas. 12.

See STATUTES, 13.

64. Judges are more to be trusted as interpreters of the law than as expounders of what is called public policy.—*Cave*, J., *In re* Mirans; *Ex parte* Official Receiver (1891), 60 L. J. Rep. (N. S.) Q. B. 399.

See 1, 44, *above;* FOREIGN LAW, 4; PUBLIC POLICY, 8; STATUTES, 14.

65. In former years, and down to times within my recollection, Judges of what used to be the common law Courts of this realm delighted in applying, rigidly and strictly, a series of rules and maxims which their predecessors had delighted themselves in devising, although they did not always commend themselves to the apprehension of the million.—*James*, L.J., Ashworth *v.* Outram (1877), 5 L. R. Ch. D. 941.

See 71, *below;* COMMON LAW, 4; DICTUM, 3, 5; DISCRETION, 12; EQUITY, 18; LAW, 58; PRACTICE, 4; STATUTES, 24.

66. I think we ought to adhere to those ancient forms which have been perfected by the wisdom of ages and confirmed in their utility by the experience of many centuries.—*Best*, J., Orton *v.* Butler (1822), 2 Chit. Rep. 350.

See 33, 36, 41, *above;* JUDICIAL DECISIONS, 4, 16; LAW, 46, 49; MISCELLANEOUS, 6, 7; PRACTICE, 17; USAGE, 13.

67. If I must either attribute to some Judges a reverence more for the letter than the spirit, caution carried too far, an over-anxiousness to keep themselves within the most clearly-defined limits of their authority, or ascribe to others an arbitrary and unwarrantable assumption of legislative power, I elect the former.—*Knight-Bruce*, L.J., Boyse *v.* Rossborough (1854), 23 L. J. Rep. Part 5 (N. S.) Ch., p. 331.

See LAW, 50; PARLIAMENT, 14; STATUTES, 13.

68. I am not now going, and I do not suppose that any Judge will ever do so, to lay down a rule which, so to say, will tie the hands of the Court.—*Pearson*, J., Holland *v.* Worley (1884), L. R. 26 C. D. 584.

See 44, *above;* DISCRETION, 12; JUDGES, 12; MISCELLANEOUS, 23.

69. I am far from being such a Judge as shall lay any intolerable yoke upon any one's neck.—*Holt*, C.J., Philips *v.* Bury (1788), 2 T. R. 358.

See above, 36, 44, 68; COMMERCE, 32; DISCRETION, 12.

70. In the judgments which Judges pronounce, this is inevitable, that, having their minds full, not only of the cases before them, but of the

Judges—*continued.*

principles involved in the cases which have been referred to, it very often happens that a Judge, in stating as much as is necessary to decide the case before him, does not express all that may be said upon the subject. That leaves the judgment open sometimes to misconstruction, and enables ingenious advocates, by taking out certain passages, to draw conclusions which the Judge never meant to be drawn from the words he used.[1]—*Sir James Bacon*, V.-C., Green's Case (1874), L. R. 18 Eq. Ca. 433.

See 11, *above, and references;* ADMINISTRATION OF JUSTICE, 7, 8, 9; COUNSEL, 22; EQUITY, 18; EVIDENCE, 6; JUDICIAL DECISIONS, 9; LAW, 2; LAW REPORTS, 2; PRACTICE, 6.

71. It certainly is very hard upon a Judge, if a rule which he generally lays down, is to be taken up and carried to its full extent. This is sometimes done by counsel, who have nothing else to rely on; but great caution ought to be used by the Court in extending such maxims to cases which the Judge who uttered them never had in contemplation. If such is the use to be made of them, I ought to be very cautious how I lay down general maxims from this bench.—*—Mansfield*, C.J., Brisbane *v.* Dacres (1813), 5 Taunt. 162.

See 65, 70, *above;* 72, *below;* DICTUM, 3, 5.

72. In my opinion it is very important that one Judge should not attempt to draw fine distinctions between cases before him and similar cases decided by another Judge. Practitioners are much embarrassed by minute differences between the decisions of different Judges, and it is very important to follow a line of procedure which has been already laid down.—*Fry*, J., *In re* Symons; Luke *v.* Tonkin (1882), L. R. 21 C. D. 761.

See 3, 71, *above;* CASES, 14; PRACTICE, 14.

73. If once our Courts of Justice come to be awed or swayed by vulgar noise, and if judges and juries should manage themselves so as would best comply with the humour of the times, it is falsely said that men are tried for their lives or fortunes; they live by chance, and enjoy what they have as the wind blows, and with the same certainty. Let us pursue the plot a God's name, and not baulk anything where there is danger or suspicion upon reasonable grounds; but not so overdo it, as to show our zeal, we will pretend to find what is not; nor stretch one thing beyond what it will bear, to reach

[1] It is not fair to criticise every line and letter of a summing-up which has been delivered by a Judge in trying a case, especially when there is a somewhat imperfect record of it.—*Lord Hatherley*, Prudential Assurance Co. *v.* Edmonds (1877), L. R. 2 App. Ca. 494.

Judges—*continued.*

another.—*Scroggs*, L.C.J., Speech on the first day of Michaelmas Term (1679), 16 How. St. Tr. 242.

See 36, *above*; 82, *below*; ADMINISTRATION OF JUSTICE, 20.

74. I will not be influenced by any judgment that is founded either on fear or favour.—*Willes*, L.C.J., Welles *v.* Trahern (1740), Willes' Rep. 240.

See CRIMINAL JUSTICE, 26, 30; JUSTICE, 3; LAW, 19; PUNISHMENT, 6.

75. The character of the Judges is public property, and if they have done anything amiss, they ought to be censured. But if not, their characters ought to be respected; otherwise the most mischievous consequences will arise to the public.—*Lord Kenyon*, Holt's Case (1793), 22 How. St. Tr. 1234.

See 26, *above*; 76, *below*; ADMINISTRATION OF JUSTICE, 20; CHARACTER, 7; CONTEMPT OF COURT, 1; JUDICIAL PROCEEDINGS, 11.

76. We that do sit here, do move in a sphere, and should be like the *primum mobile*, according to whom all others are to steer their course; and Judges themselves must move steadily upon their right poles, as I hope this Court will. What Judge soever he be that is elevated by popular applause,[1] or animated by the contrary, to accumulate honour, is fitter to live "*in fœce Romuli quam in politia Anglice.*" Nor will I lose time in remembering the first oath of a Judge, who should expel all by-respects, and speak his conscience. I hope none of us forget the duty we owe to God, to the King, and to the commonwealth, and to ourselves. I shall endeavour to satisfy my conscience in all that I can say. And they forget their duty to the first, and humanity towards us, that say or think the contrary of any one of us. Some of us have fortunes and posterities, and therein have given hostages to the commonwealth. . . . Those that want those blessings, want those temptations that make dream of, or hunt for honour or riches, to perpetuate their names and families; to them nothing can be more precious than the balm of integrity, which will preserve their names and memories. It cannot be presumed, but we will speak our consciences, since we well know shortly, as the psalmist says, "*Corruption shall say, I am thy father, and the worm, I am thy mother.*"—*Finch*, L.C.J., Hampden's Case (1637), 3 How. St. Tr. 1217.

See 3, 26, *above*; DISCRETION, 9; EVIDENCE, 29; JURY, 8; POLITICS, 3; TRIAL FOR LIFE, 1.

77. I will tell you we are bound to be of counsel with you, in point of law; that is, the Court, my brethren and myself, are to see that you

[1] See Sir Matthew Hale's precepts: "Things necessary to be continually had in remembrance."—*Hale's* "Common Law" (ed. 1794), p. xx, referred to *antè*, p. 113, *n.*

Judges—*continued.*

suffer nothing for your want of knowledge in matter of law.—*Hyde*, C.J., Twyn's Case (1663), 6 How. St, Tr. 516.

See 79, *below;* LAW, 14; PRESUMPTION, 12.

78. I am obliged to watch as he has no counsel.—*Bayley*, J., King *v.* Knowles (1820), 1 St. Tr. (N. S.) 505.

See 80, *below.*

79. I have been reminded that I sit here as counsel for the defendant. I certainly do so, so far as to interpose between him and the counsel for the prosecution, and to see that no improper use of the law is made against him, and that no improper evidence is given to the jury[1]: but the Judge has another task to perform, which is that of assisting the jury in the administration of justice.—*Lord Kenyon*, Wakefield's Case (1799), 27 How. St. Tr. 736.

See 77, *above;* EVIDENCE, 3; JUDGE, 1.

80. It is sometimes said—erroneously, as I think—that the Judge should be counsel for the prisoner[2]; but at least he must take care that the prisoner is not convicted on any but legal evidence.—*Wills*, J., Reg. *v.* Gibson (1887), 18 Q. B. D. 537; 16 Cox, C. C. 181.

See 78, *above;* CRIMINAL JUSTICE, 31.

81. By our rules we cannot receive a letter from a friend.[3]—*Bayley*, J., King *v.* Knowles (1820), 1 St. Tr. (N. S.) 515.

[1] The Court ought to be in stead of councell for the prisoner, to see that nothing be urged against him contrary to law and right.—*Coke*, 3 Inst. 29.

[2] As to the doctrine of the Judge being considered in the light of counsel for the prisoner, see 1 *Chitty's* "Crim. Law," 407: It has often been urged that a Judge ought not to be put to prosecute: similarly applies the objection that a Judge ought not to play the part of counsel for the prisoner. The miserable economy that violates the first principles of justice for the sake of a trifling saving to a county is disgraceful to our jurisprudence, and discreditable to those by whom those local tribunals are regulated. It is not in human nature to advocate both sides of a question with equal zeal. It is impossible at once to do justice to the prosecutor and the criminal. If it were not so, why in all civilized countries is the intervention of advocates deemed essential to the administration of justice. Of the unemployed barristers who sit round the table, why might not the prisoner be permitted to nominate one to defend him. The poor prisoner would then, at least, have justice done to him, and the spectacle of poverty baited by wealth would no longer offend the eye of the unaccustomed spectator. Surely humanity could not propose to itself a nobler object than protecting innocence, and securing even to the guilty a fair and full investigation of all the circumstances that mitigate the crime. Since this note was written much of the evil pointed out has been remedied by the Poor Prisoners Defence Act, 1903 (3 Edw. 7, c. 381).

[3] The prisoner had asked for leave to read a letter he had received in the course of the trial. By the statute 20 Ed. III. c. 1, the Judges are to take no fee but from the King to do equal right and justice, without regard to letters or commandment from the King or any other; and if any letters come, the justices are to proceed as if there were none such. (*Fortesc.* 363.) The main object of the statutes of 2 Ed. II. c. 8; 18 Ed. III. stat. 4; 20 Ed. III. c. 1, and 11 Rich. II. c. 10, prohibiting the Crown from sending letters signed by the Privy

Judges—*continued.*

82. Gentlemen, I speak for myself as well as for you: I never read anything about what may come before me in a Court of Justice; I keep my mind free from everything of the kind. There is often a necessity for me to look into the law: but I never suffer my mind to be biassed by reports, or such papers or pamphlets as are written with a view to pervert justice.[1]—*Pratt*, C.J., Wilkes' Case (1763), 19 How. St. Tr. 1410.

See above, 58, 73; ADMINISTRATION OF JUSTICE, 20; CONTEMPT OF COURT, 10; JUDICIAL PROCEEDINGS, 11; JURY, 25.

Signet or Privy Seal to the Courts of justice, was to prevent the undue interference of the Crown in the litigation of private suits; but the language of those statutes, and the mischief, apply, as distinctly, to the case of the Crown sending a missive to any of the Courts for any purpose (see the firm conduct of the Judges in resisting an undue exercise of the prerogative by Queen Elizabeth, in *Cavendish's Case*, 1 Anderson, 152; *id. Pettyt's* Jus Parliamentarium, 68, 205—210). The statute 18 Ed. III. stat. 4, prescribes the oath to be taken by a Judge, and then enacts that, in case he be found in default in any of the points contained in such oath, he shall be at the King's will of body, lands, and goods, thereof to be done as shall please him. The following is the translation of the oath, which is given in Ruffhead's edition of the statutes, the original of which is in Norman French:—

"You shall swear, that well and lawfully ye shall serve our soveraigne lord the King, and his people, in the office of Justice,—and that lawfully* ye shall counsaile the King in his businesses,—and that you shall not counsaile, nor assent to, anything, which may turn him to damage or disherisō, by any maner, way, or colour; —and that ye shall not know the damage or disherison of him, whereof ye shall not do him to be warned by yourself or by other,—and that ye shall do even law and execution of right to all his subjects, rich and poore, without having regard to any person,—and that ye take not by yourself, or by other, privily nor apiertly, gift nor reward of gold nor silver, nor of any other thing which may turne to your profit, unless it be meat or drinke, and that of small value, of any man that shall have any plea or process hanging before you, as long as the same process shall so be hanging, nor after for the same cause; and that ye take no fee, as long as ye shall be Justice, nor robes of any man great or small, but of the Kinge himselfe. And that ye give none advice nor counsaile, to no man, great nor small, in no case where the King is party,—and in case that any, of what estate or conditiō they be, come before you in your sessions, with force and armes, or otherwise against the peace, or against the forme of the statute thereof made, to disturbe execution of the common law, or to menace the people, that they may not pursue the law, that you shal do their bodies to be arrested and put in prison, and in case they be such that ye may not arrest them, that ye certifie the King of their names, and of their misprison hastily, so that he may thereof ordaine a covenable remedy,—and that ye, by your selfe nor by other, privily nor apertly, maintaine any plea or quarrell hanging in the King's court or elsewhere in the country,—and that you deny to no man common right, by the King's letters, nor none other man's, nor for none other cause, *and in case any letters come to you contrary to the law, that ye do nothing by such letters, but certifie the King thereof, and go forth to do the law, notwithstanding the same letters.* And that ye shall doe and procure the profit of the King, and of his crowne, with all things where ye may reasonably do the same. And in case ye be from henceforth found in default in any of the points aforesaid, ye shall be at the King's will of body, lands and goods, thereof to bee done as shall please him; as God you helpe." *See also* 22, *above;* POLITICS, 3, *and references therefrom.*

* Loyalment, honestly.

[1] I pass over many anonymous letters I have received. Those in print are public: and some of them have been brought judicially before the Court. Whoever the writers are, they take the wrong way. I

Judgment.

A judgment for too little, is as bad as a judgment for too much.—*Per Cur.*, King *v.* Salomons (1786), 1 T. R. 252.

See also JUDICIAL DECISIONS, 8; PRACTICE, 29, 30.

Judicial Decisions.

1. Year-books, books written of the law of England, and judgments in Parliament, are three of the authorities, and they are *thesauri aperti*. Judicial records and precedents are the fourth, and they are *thesauri absconditi*.—*Lord Coke*, Case of the Marshalsea (1612), 10 Rep. 75.
2. I cannot help observing, that many of those who have written in support of our ancient system of jurisprudence, the growth of the wisdom of man for so many ages, are not as they are alleged by some to be men writing from their closets without any knowledge of the affairs of life, but persons mixing with the mass of society, and capable of receiving practical experience of the soundness of the maxims they inculcate.—*Lord Kenyon*, C.J., King *v.* Waddington (1800), 1 East, 157.

   See EVIDENCE, 29; STATUTES, 14.
3. It is certainly true that from the reign of *Edward* VI. to the end of the reign of *James* I., many decisions will be found turning on many nice points, and many now apparently frivolous objections have been entertained, but it was not because the Judges who graced the bench in those days were inferior, either in intellect or in learning, to those who now sit on it; in the last, I fear, they would be found our masters; but it is because a greater liberality of sentiment now prevails in the decisions of Courts of justice.—*Gibbs*, C.J., Croydon Hospital *v.* Farley (1816), 6 Taunt. 479.

   See PRECEDENTS, 1.
4. To be sure the Court regularly adheres to regular judgments, if in the support of the merits and justice; but if against the merits and

will do my duty, unawed. What am I to fear? That *mendax infamia* from the press, which daily coins false facts and false motives? The lies of calumny carry no terror to me. I trust, that my temper of mind, and the colour and conduct of my life, have given me a suit of armour against these arrows.—*Lord Mansfield*, Wilkes' Case (1763), 19 How. St. Tr. 1112. *See also Coke's Advice to the Judges*, *antè*, p. 113, JUDGES, 26, *n.*

Note.—For long past it has been, as is well known, a contempt of Court for a publication to comment on a case *sub judice*, as it may influence those who have to decide it, and who should be influenced by the evidence alone. But when the decision is once given, the tongue of public criticism becomes unfettered. *See antè*, CONTEMPT OF COURT, 9, *and references there given.*

[1] "Lord Chief Justice *Gibbs* used to say that he could get authorities in the Year-Books for any side in any thing," said Lord Lyndhurst, Lord Chancellor, in the course of the argument of a celebrated case in the House of Lords: Gray *v.* The Queen (1844), 11 Clark & Finnelly, 441.

Judicial Decisions—*continued.*

justice they always get rid of the mere formality of them; but they do it upon terms.—*Lord Mansfield*, Lord Mexborough *v.* Sir John Delaval (1773), Lofft. 310.

See also JUDGES, 66.

5. This Court is bound to adhere loyally to former decisions unless clearly satisfied that they are wrong. But, if we are satisfied that a former decision is clearly wrong, and not warranted by law, we ought not blindly to follow it: and I am satisfied that the Court has acted upon that principle on more than one occasion. . . . I agree also that the Court should use the utmost circumspection in overruling a case which has been acted upon for several years, and especially after subsequent legislation upon the subject, which has left the decision untouched.—*Brett*, J., Hadfield's Case (1873), L. R. 8 Com. Pl. Ca. 318, 320.

See also 6, 20, 24, *below;* COMMON LAW, 12; CONSTRUCTION, 6, 28; LAW, 73; LAW REPORTS, 3; PRACTICE, 12, 13; PRECEDENTS, 2, 17, 20; STATUTES, 3.

6. It is my misfortune to differ in opinion from some decisions of this Court, not from captious motives, but from a conscientious conviction, that those decisions are not founded upon the true principles of law and justice; and therefore I feel it my duty to endeavour to effect a restoration of the law to its true constitutional and legitimate standard[1]: when I shall be told by the highest Court of Judicature in this kingdom, assisted by the other Judges of *Westminster Hall* (as I suppose that assistance would be called in), that the decisions I oppose are right; I shall then acquiesce and conform to them.—*Wood*, B., Bennett *v.* Beale and others (1811), Wightw. 330.

See CASES, 21; LAW REPORTS, 3; PRECEDENTS, 2, 18.

7. It is the duty of the Court not to alter a decision brought in review before it, merely because another view, perhaps as good, may be presented. In matters involving discretion it is often very difficult to say with certainty which decision is right.—*Sir John Stuart*, V.-C., Wilcox *v.* Marshall (1867), L. R. 3 Eq. Ca. 272.

See APPEAL, 7; PRECEDENTS, 11.

8. Judgments are in their nature equal till they are reversed, in what Court soever they are obtained; a judgment in a Court of record by grant, is equal to a judgment in a Court of record by prescription; and a judgment in a Court pièpoudre is equal to a judgment in any

[1] *Judicia posteriora sunt in lege fortiora:* The later decisions are the stronger in law.—8 *Co.* 97. *Judiciis posterioribus fides est adhibenda:* Credit is to be taken to the later decisions.—13 *Co.* 14.

Judicial Decisions—*continued.*

of the superior Courts.—*Eldon*, L.C., Mo rice *v.* Bank of England (1736), 3 Swanston, 575.

See also antè, JUDGMENT.

9. I have often said, and I repeat it, that the only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided: but it is not sufficient that the case should have been decided on a principle if that principle is not itself a right principle, or one not applicable to the case; and it is for a subsequent Judge to say whether or not it is a right principle, and, if not, he may himself lay down the true principle. In that case the prior decision ceases to be a binding authority or guide for any subsequent Judge, for the second Judge who lays down the principle in effect reverses the decision.—*Jessel*, M.R., Osborne to Rowlett (1880), L. R. 13 C. D. 785.

See 12, 18, *below;* CASES, 9, 21; JUDGES, 70, 72; LAW, 2; PRECEDENTS, 18.

10. Decisions are to be followed as precedents.—*Leach*, M.R., Walsh *v.* Wallinger (1829), Tamlyn's Rep. 429.

See PRECEDENTS, 3, 19.

11. Judicial opinion has varied a great deal, and must vary a great deal, when you consider the ground upon which that judicial opinion or those judicial opinions have been founded.—*Jessel*, M.R., Besant *v.* Wood (1879), L. R. 12 C. D. 620.

See PRECEDENTS, 1.

12. It is the principle of the decision by which we are bound, not a mere rule that in exactly the same circumstances we are to arrive at the same conclusions. Therefore to say that the decisions are wrong in point of principle, if that principle was clearly laid down, does not relieve us from the obligation of following the principle of the decision, because the whole theory of our system is, that the decision of a superior Court is binding on an inferior Court and on a Court of co-ordinate jurisdiction, in so far as it is a statement of the law which the Court is bound to accept.—*Sir W. M. James*, L.J., Merry *v.* Nickalls (1872), L. R. 7 Ch. Ap. Ca. 750.

See 9, *above;* JURISDICTION, 20; LAW, 53; PRECEDENTS, 20.

13. Judicial decisions in Courts of justice are ranked by Lord Hale as one of the grounds or constituents of the common law.[1]—*Tindal*, L.C.J., Balme *v.* Hutton (1833), Moore & Scott's Rep. 61.

See PRECEDENTS, 10.

[1] *Hale's* "History of the Common Law," c. 4.

Judicial Decisions—*continued.*

14. A considerable part of the law of England consists of judicial decisions, and in the very nature of things this must be so. Every decision upon a debated point adds a little to the law by making that point certain for the future.—*Stephen*, J., Reg. *v.* Coney and others (1882), 15 Cox, C. C. 58.

See Precedents, 20, *and references therefrom.*

15. It is very dangerous for a Judge who does not agree with particular decisions, to deal in distinctions from those decisions.—*Jessel*, M.R., *In re* International Pulp and Paper Co.; Knowles' Mortgage (1877), L. R. 6 C. D. 559.

See 17, *below.*

16. I think that the proper and safe course is to follow a decision of a Court of co-ordinate jurisdiction, unless some cogent reason is given to the contrary.—*Kekewich*, J., Evans *v.* Manchester, &c. Rail. Co. (1887), L. J. (N. S.) 57 C. D. 157.

See Construction, 13; Judges, 66; Jurisdiction, 4; Law, 53.

17. It is a matter of great difficulty to a Judge who disapproves of a decision to be quite sure that he is honestly distinguishing the case in which it was given from the case before him. Of course, the inclination of his mind is to find every distinction sufficient, and therefore he must be particularly on his guard to see that he does not unfairly distinguish with a view to getting rid of the original decision. I have tried in every instance before me to be thus on my guard, but whether I have succeeded or not will be for others to say.—*Jessel*, M.R., Smith's Case (1879), L. R. 11 C. D. 587.

See 9, 15, *above;* Precedents, 7, 13.

18. I will have it done, that it may remain a decision *in perpetuam rei memoriam.*—*Holt*, C.J., Tutchin's Case (1704), 14 How. St. Tr. 1101.

19. A great deal of difficulty has been caused in the administration of the law, and particularly of the common law, by decisions in which technical rules have been formulated which were not true—that is, were not in accordance with the facts of the case.—*Lord Esher*, M.R., *In re* North, *Ex parte* Hasluck (1895), L. R. 2 Q. B. D. [1895], p. 269.

See Law, 72; Law Reports, 3.

20. When we find a series of decisions running down from the time of *Sir William Grant*, we should be very cautious, and very slow to overrule them.[1]—*Lindley*, L.J., *In re* Pickard (1894), L. R. 3 C. D. [1894], p. 710.

See above, 5; Construction, 6; Law, 73.

21. A series of decisions based upon grounds of public policy, however

[1] This was in reference to the case of Finch *v.* Squire (1804), 10 Ves. 41.

Judicial Decisions—*continued.*

eminent the Judges by whom they were delivered, cannot possess the same binding authority as decisions which deal with and formulate principles which are purely legal.—*Lord Watson*, Nordenfelt *v.* Maxim Nordenfelt Guns and Ammunition Company (1894), L. R. App. Ca. Part 5, p. 553.

See above, 5, 6; PUBLIC POLICY, 8.

22. A collection of records may be the result of professional knowledge, research, and skill, just as a collection of curiosities is the result of the skill and knowledge of the antiquarian or virtuoso.—*Bowen*, L.J., Lyell *v.* Kennedy (1884), L. R. 27 C. D. 31.

23. I must look at the decision with reference to all the circumstances which led to it.—*Kekewich*, J., *In re* England (1895), L. R. 2 C. D. [1895], p. 109.

See above, 5, 6; CASES, 16.

24. Where there is a decision precisely in point, it is better to follow it. —*Lord Eldon*, Townley *v.* Bedwell (1808), 14 Ves. 596.

See above, 23; PRECEDENTS, 14, 19, 20.

25. The headnote is the fair epitome of the decision.—*Kekewich*, J., Ashworth *v.* Roberts (1890), L. J. Rep. (N. S.) 60 C. D. 28.

26. Mankind naturally give evidence to the constituted Courts, and reputation is incurably damaged by their decisions, whether erroneous or not.—*Lord Penzance*, Borough *v.* Collins (1890), L. R. 15 P. D. 85.

See ADMINISTRATION OF JUSTICE, 3; COURTS, 13, 14.

Judicial Proceedings.

1. It is upon the ground that Courts of justice are open to the public, that what passes there is public at the time, and that it is important that all persons should be able to scrutinise what is there done, that the publication of everything which there passes has been thought to be lawful.—*Littledale*, J., Stockdale *v.* Hansard (1840), 3 St. Tr. 923.

See CONTEMPT OF COURT, 9.

2. It is of great consequence that the public should know what takes place in Court; and the proceedings are under the control of the Judges. The inconvenience, therefore, arising from the chance of injury to private character is infinitesimally small as compared to the convenience of publicity.[1]—*Lord Campbell*, Davison *v.* Duncan (1857), 7 E. & B. 231; 26 L. J. Q. B. 106.

See 3, 6, *below*; JUDGES, 13.

[1] The superior benefit of the publicity of judicial proceedings counterbalances the injury to individuals, though that at times may be great.—*Wightman*, J., Davison *v.* Duncan, *suprà*. Private interest must give place to a common good; the

Judicial Proceedings—*continued.*

3. Public policy requires that some hardship should be suffered by individuals rather than that judicial proceedings should be held in secret.—*Lord Esher*, M.R., Kimber *v.* The Press Association (1892), L. R. 1 Q. B. [1893], p. 69.

See 2, above; 7, below.

4. The general rule is an excellent one, that legal proceedings should be in public.—*North*, J., *In re* Martindale (1894), L. R. C. D. [1894], p. 200.

5. It is one of the essential qualities of a Court of justice, that its proceedings should be public, and that all parties who may be desirous of hearing what is going on, if there be room in the place for that purpose,—provided they do not interrupt the proceedings, and provided there is no specific reason why they should be removed,—have a right to be present for the purpose of hearing what is going on.[1]—*Bayley*, J., Daubney *v.* Cooper (1829), 10 B. & C. 240.

private prejudice that any man hath, is very well repaired by the public utility that comes to the kingdom. — *Sir Ed. Littleton*, Hampden's Case (1637), 3 How. St. Tr. 927.

Jam tua res agitur paries cum proximus ardet: The private must suffer for the public cause.—22 Ed. IV. f. 2 b.; 26 Ed. I. f. 45.

[1] In connection with this ruling it may be appropriate to reproduce here the following correspondence which appeared in *The Times* of June 8, 1891, relative to the admission of the public to the Law Courts :—

To the Editor of *The Times*.

SIR,—I shall be much obliged if you can find room for these letters in your Monday paper.

Your obedient servant,
COLERIDGE.

1, Sussex Square, Hyde Park, W., June 6.

37, Temple, E.C.,
June 5, 1891.

MY LORD,—Since it appears there is little or no chance of gaining admittance into your Court without a ticket, I now formally apply for one. I base my application on the ground that although a Judge is indeed absolute emperor over his Court, yet his power does not extend to the selection of what body of people shall represent the "public" in cases which are not heard *in camerâ*. Although a Judge has the undoubted right to take such measures as to insure the convenience of those having business in the Court, even to the exclusive issuing of tickets of admission, yet such tickets should be distributed impartially to all applicants. I have no personal knowledge that such has not been actually the case. This I know, that I have been told that Lady Coleridge has distributed most of the tickets among her friends. I say this, not because I in any way wish to be insulting or disrespectful to a lady, but simply as a statement of fact as to what I heard a Templar say. I also say it in order to call attention to a fact I am sure your lordship will admit to be true, and that is your lordship's personal friends have no more right to represent the public than the friends of John Smith. It would seem that this ticket-issuing, or rather its distribution, has practically resulted in the above-mentioned undesirable outcome. I also maintain that if there is room in the well of the Court, any member of one of the Inns of Court has a prior right to a seat therein over an ordinary member of the public—whether provided with tickets from the Judge or not. This system of admittance by tickets only, if tolerated, will practically confer on the Judge the power of selecting his audience—a right which up to now, I labour under the impression, has not been conferred on them either by statute or any other law. It is not within my province to find fault with your lordship for

Judicial Proceedings—*continued.*

6. It is of vast importance to the public that the proceedings of Courts of justice should be universally known. The general advantage to the

taking the best means in your opinion to insure the comfort of those who are bound to be in your Court, any more than to do so with reference to the degrading of the Bench to the level of a grand stand; but I consider that no one, by virtue of holding a ticket of admission, has the right to take precedence of those who are standing much nearer to the door than he is—in other words, no member of the public having no *locus standi* in your Court has the right to have the seat kept reserved for him, the first 72 members of the public who present themselves at the public gallery have the right to be admitted. I say 72, because I believe that is the number which can be accommodated in the public gallery of your lordship's Court. I believe I am not wrong in saying that there is no denying my assertion. The Court, so far as I know, takes no notice of the difference between peer and pauper in the question of admittance therein. If John Smith, labourer, is in front of Lord Knows Who, and there is only one seat vacant in the public gallery, the peer has no prior right to occupy that seat. Your lordship probably knows all this better than I do, yet in the face of recent events, it is well to mention all that I have. I respectfully propose to your lordship that orders be given to the official at the door to admit members of the Inns of Court (on presentation of their cards of membership, or on their otherwise satisfying them of the person being such), giving them precedence over members of the public possessing a ticket which, strictly speaking, gives them no more right to be admitted than a piece of waste-paper. If the tickets only admit by "courtesy" and not by "right," then I claim, my Lord, that such courtesy should be extended first to members of the Inns of Court.

Be that as it may, but since admission to the Court has been by ticket, I think I may safely conclude that as many tickets as there are seats have been already distributed. If that is so, in order to show such distribution did not practically amount to a selection of the "public" among your lordship's friends and acquaintances, one or other of my alternatives should be acted upon. Either the members of the Inns of Court should be admitted by virtue of their membership, or a ticket should be sent to one who has not the honour of being a friend or acquaintance of your lordship's—to wit, to me. As I have said before, I deny the right of anyone to "reserved" seats in a Court of justice. A member of my Inn, in palliation, said that the tickets were not sold, but granted gratis to all applicants. I hope that is so. Armed with a ticket of admittance I hope to be able to gain an entry, taking my chance with others similarly armed. Supposing the possessor of a ticket issued before the trial commenced is absent, his seat should be kept vacant. If he is late, an earlier ticketholder should occupy the space allotted to him when present. On these grounds I respectfully ask your lordship to issue tickets over and above those already issued, so that there should be no appearance of the Court being reserved for a few personal friends.

Your obedient servant,
L. TALLIEN A. M'VANE.*
To the Right Hon. J. D. Lord Coleridge.

1, Sussex Square, W.,
June 6, 1891.

SIR,—I have hesitated whether to take any notice of your letter; but it has become the custom to assume that anyone has a right to accuse any other person of anything, and that if that other is not at the trouble of replying to the accusation he must be taken to admit its truth. It

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* The writer at the time of his writing was apparently only a student, being called to the Bar by the Inner Temple on May 11, 1892. It will be a matter of surprise to many to know that the abominable and un-English practice of exacting money for admission to a Court of justice, *i.e.* to the galleries of the Central Criminal Court, existed until so late as in 1860, when it was abolished and a condition precedent to admission, in the shape of a ticket from the sheriff, substituted. A full account in connection with the subject will be found in *The Times* of December 10, 1860. See also *Jur.* (N. S.), Vol. 5 and 6, Part 2. (1859—60), p. 458.

Judicial Proceedings—*continued.*

country in having these proceedings made public more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings. The same reasons also apply to the proceedings in Parliament: it is of advantage to the public, and even to the legislative bodies, that true accounts of their proceedings should be generally circulated.[1]—*Lawrence*, J., The King *v.* Wright (1799), 8 T. R. 298.

See 2, *above;* HUSBAND AND WIFE, 5; JUDGES, 61; JUSTICE, 6.

is very inconvenient just now to spend valuable time in replying to you; but in such a matter as the public administration of justice it is perhaps better to submit to the inconvenience.

No one except the Sovereign and the Judges has any right upon the Bench; but it has been the immemorial custom for the Judges to extend the courtesy of a seat there to peers, Privy Councillors, and any other persons whom they may choose to invite. I speak from a personal recollection of more than 50 years. It is a discretion I shall exercise as my illustrious predecessors have exercised it, when and as I think fit, and with which, except by Parliament, I shall permit no interference.

The statement as to my wife, which you profess to have heard from "a Templar," is absolutely untrue. It seems that some Templars can be like other men—inaccurate—and that other Templars can forget what is usually considered due to a lady. It is equally untrue that the Bench has been filled by my personal friends. My wife has had at her disposal three seats, and three seats only, including her own. The majority of persons on the Bench have been unknown to me, even by sight, but they have been persons to whom, for one reason or another, it seemed proper to grant the privilege. Exactly the same observations apply to my own small gallery and to a portion of the gallery opposite the Bench. The rest of that gallery and the whole of the body of the Court has been absolutely free, but I have given strict orders to prevent overcrowding, so that the quiet and orderly trial of the cause shall be secured; with the further direction that the utmost available space shall be given to members of the Bar in costume; and that the reporters for the Press, who keep the public informed of the proceedings in Court, shall be able to perform their important duty, as far as possible, in ease and comfort.

I believe that my orders have not been wholly ineffectual, and they will certainly be continued. When the Court is full my orders are to exclude everyone. There are thousands, I daresay, who would like to hear the trial of an interesting cause; but it is, in my opinion, far more important that those who do hear it should be comfortable (so far as comfort is possible in the Royal Courts of Justice), and therefore quiet and orderly, than that a few more persons—it may be 100—should hear it at the expense of the comfort, the quiet, and the order of the whole audience. I have acted before now on these views; and shall certainly act on them now and whenever it may be my fate to preside at the trial of a case which excites public interest. I can make no alteration in your favour.

As the person you refer to as "a Templar" and yourself may perhaps repeat your mistakes, I shall send your letter and my answer to the newspapers.

I am, Sir,
your obedient, humble servant,
COLERIDGE.

L. T. A. M'Vane, Esq.

[1] "Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity. It keeps the Judge himself while trying under trial. Under the auspices of publicity, the cause in the Court of law, and the appeal to the court of public opinion, are going on at the same time. So many bystanders as an unrighteous Judge, or rather a Judge who would otherwise be unrighteous, beholds attending in his Court, so many witnesses he sees of his unrighteousness, so many condemning Judges, so many ready executioners, and so many proclaimers of his sentence. By

Judicial Proceedings—*continued.*

7. The privilege which attaches to the publication of the proceedings of the Courts of justice rests on the foundation that the law of this land is administered publicly and openly, and its administration is at once subjected to, and protected by, the full and searching light of public opinion and public criticism. The openness and publicity of our Courts forms one of the excellences of our practice of the law, and admits of exception only in rare cases of such a character that public morality requires that the proceedings should be *in camerâ* wholly or in part. This openness and publicity was at one time peculiar to the law of England. Barrington, in his observations on the statutes, and speaking of our open Courts, says: "I do not recollect to have met in any of the European laws with an injunction that all causes should be heard '*ostiis apertis*,' except in those of the republic of Lucca. In Scotland, by a statute of William and Mary, all causes must be tried with open doors, rape and the like being excepted." And Mr. Emlyn, in his preface to his edition of State Trials, says: "In other countries the Courts of justice are held in secret; with us publickly and in open view; there the witnesses are examined in private, and in the prisoner's absence; with us face to face, and in the prisoner's presence."—*Lord FitzGerald*, Macdougall *v.* Knight (1889), L. R. 14 Ap. Ca. 206.

See 3, *above;* 11, *below;* ADMINISTRATION OF JUSTICE, 20; CONTEMPT OF COURT, 9; CRIMINAL JUSTICE, 14, 15; JUDGES, 18, 61, 75, 82; MORALS, 1.

8. As to proceedings in Courts of justice, it is for the interest of all the public to hear what takes place in Court.—*Lord Esher*, M.R., Pittard *v.* Oliver (1891), L. J. 60 Q. B. D. 221.

See above, 7, and references therefrom.

publicity, the Court of law, to which his judgment is appealed from, is secured against any want of evidence of his guilt. It is through publicity alone that justice becomes the mother of security. By publicity, the temple of Justice is converted into a school of the first order, where the most important branches of morality are enforced by the most impressive means: into a theatre, where the sports of the imagination give place to the more interesting exhibitions of real life.

"Nor is publicity less auspicious to the veracity of the witness than to the probity of the Judge. Environed as he sees himself by a thousand eyes, contradiction, should he hazard a false tale, will seem ready to rise up in opposition to it from a thousand mouths. Many a known face, and every unknown countenance, presents to him a possible source of detection, from whence the truth he is struggling to impress may, through some unsuspected connection, hurst forth to his confusion.

"Without publicity, all other checks are fruitless: in comparison with publicity, all other checks are of small account. It is to publicity, more than to everything else put together, that the English system of procedure owes its being the least bad system as yet extant, instead of being the worst."—*Benthamiana; or, Select Extracts from the Works of Jeremy Bentham*, 1843, p. 419.

Judicial Proceedings—*continued.*

9. The proceedings in our Courts are founded upon the law of England, and that law is again founded upon the law of nature and the revealed law of God.—*Best*, J., Forbes *v.* Cochrane and another (1824), 2 St. Tr. (N. S.) 167.

See CHRISTIANITY, 5; LAW, 68; PUBLIC POLICY, 7.

10. It is the excellence of our law that its Judges are illuminated and fortified by the concurrent justice and support of all other arts and sciences, and its honour that these great Courts where it is administered are public, and interfere not with immodesty or indecent subjects, as divorces and other evils of matrimony, which are more easily allayed by private conference, than healed by public discussion.—*Per Cur.*,[1] Manby *v.* Scott (1672), 1 Levinz, 4; 2 Sm. L. C. (8th ed.) 460.

See above, 7; HUSBAND AND WIFE, 5; JUDGES, 1, 57.

11. Nothing can be of greater importance to the welfare of the public than to put a stop to the animadversions and censures which are so frequently made on Courts of justice in this country. They can be of no service, and may be attended with the most mischievous consequences. Cases may happen in which the Judge and the jury may be mistaken: when they are, the law has afforded a remedy; and the party injured is entitled to pursue every method which the law allows to correct the mistake. But when a person has recourse either by a writing like the present, by publications in print, or by any other means, to calumniate the proceedings of a Court of justice, the obvious tendency of it is to weaken the administration of justice, and in consequence to sap the very foundation of the Constitution itself.[2]—*Buller*, J., King *v.* Watson and others (1788), 1 T. R. 205.

See above, 7; ADMINISTRATION OF JUSTICE, 20; APPEALS, 1; CONTEMPT OF COURT, 9; JUDGES, 75, 82,

12. Public notoriety is nothing here; we can only be informed of the facts relevant to the matter before us.—*Abbott*, C.J., R. *v.* Edmonds and others (1821), 1 St. Tr. (N. S.) 925.

See RIGHTS 3.

13. Words used in the course of legal or judicial proceedings, however hard they might bear on the party of whom they were used, were not

[1] *Mallet*, *Twisden* and *Terrill*, JJ.

[2] *Fama, quæ suspicionem inducit, oriri debet apud bonos et graves, non quidem malevolos et maledicos, sed providas et fide dignas personas, non semel sed sæpius, quia clamor minuit et defamatio manifestat:* Report, which induces suspicion, ought to arise from good and grave men, who indeed from malevolent and malicious men, but from cautious and credible persons, not only once, but frequently; for clamour diminishes and defamation manifests.—2 *Inst.* 52.

Judicial Proceedings—*continued.*

such as would support an action for slander.—*Lord Eldon*, C.J., Johnson *v.* Evans (1800), 3 Esp. Rep. 33.

See COUNSEL, 13.

Jurisdiction.

1. God forbid that Judges upon their oath should make resolutions to enlarge jurisdiction.—*Cowper*, L.C., Reeves *v.* Buttler (1715), Gilbert, Eq. Ca. 196.

   See below, 2, 6 ; DICTUM, 4.

2. I agree we ought not to incroach or inlarge our jurisdiction ; by so doing we usurp both on the right of the Queen and the people.—*Holt*, C.J., Ashby *v.* White (1703), Lord Raym. 938.

   See above, 1 ; COMMON LAW, 11 ; MAGISTRATES, 3, *n.*

3. The rule for jurisdiction is, that nothing shall be intended to be out of the jurisdiction of the superior Court, but that which specially appears to be so ; and on the contrary, nothing shall be intended to be within the jurisdiction of an inferior Court but that which is so expressly alleged.—*Per Cur.*,[1] Peacock *v.* Bell and Kendall (1667), 1 Saund. 74 a.[2]

   See MAGISTRATES, 3.

4. The Court ought never to come to the conclusion that two cases in the same Court, or in Courts of co-ordinate jurisdiction, are in conflict, unless it is obliged to. I agree that if two cases are in conflict the Court must say with which of them it agrees.—*Lord Esher*, Duke of Devonshire *v.* O'Connor (1890), L. R. 24 Q. B. D. 473.

   See CONSTRUCTION, 13 ; JUDICIAL DECISIONS, 16 ; LAW, 53.

5. Although our powers are great, they are not unlimited—they are bounded by some lines of demarcation.—*Abbott*, C.J., The King *v.* Justices of Devon (1819), 1 Chit. Rep. 37.

   See JUDGES, 26, *n.*

6. The Court is not hungry after jurisdiction.—*Sir W. Scott*, "The Two Friends" (1799), 1 C. Rob. Ad. Rep. 280.

   See above, 1.

7. It is part of my duty to expound the jurisdiction of the Court. It is no part of my duty to expand it.—*Kekewich*, J., *In re* Montagu (1897), L. R. 1 C. D. [1897], p. 693.

   See STATUTES, 22.

[1] *Kelynge*, *Twysden*, *Wyndham* and *Moreton*, JJ.

[2] Quoted by *Parke*, B., in Howard *v.* Gosset (1844), 6 St. Tr. (N. S.) 397

Jurisdiction—*continued.*

8. A total want of jurisdiction cannot be cured by the assent of the parties.[1]—*Patteson*, J., Jones *v.* Owen (1848), 5 D. & L. 674.

   See 9, 10, 11, *below;* CONSENT, 2.

9. If the Court does not possess an inherent jurisdiction over the subject-matter, it is not possible that the consent of an individual could confer any such jurisdiction.—*Dr .Lushington*, "The Golubchick" (1840), 1 Wm. Rob. Ad. Rep. 147.

   See above, 8; STATUTES, 22.

10. Consent does not give jurisdiction.[2]—*Wilde*, B., Reg. *v.* Thompson (1861), 9 Cox, C. C. 85; 9 W. R. 208.

    See 8, 9, *above.*

11. I am extremely unwilling that we should take upon ourselves to exercise a jurisdiction which the law does not vest in us.—*Abbott*, C.J., Rex *v.* Middleton (1819), 1 Chit. Rep. 656.

    See below, 12; STATUTES, 22.

12. We ought not to overstep our jurisdictionb ecause we think it might be advantageous so to do.—*Rigby*, L.J., *In re* Watkins (1896), L. R. 2 C. D. [1896], p. 339.

    See above, 11; ADMISSION; CONSTRUCTION, 13.

13. In case of private jurisdictions, the Court has inclined not to intermeddle.—*Denison*, J., The King *v.* Bishop of Ely (1750), 1 Black. Rep. 58.

    See STATUTES, 19.

14. If it be a matter within our jurisdiction, we are bound by our oaths to judge of it.—*Holt*, C.J., Ashby *v.* White (1703), 2 Raym. Rep. 956.

    See 16, 17, *below.*

15. The title or description of a Court does not often point out the extent of its jurisdiction.—*Lawrence*, J., Lothian *v.* Henderson (1803), 3 Bos. and Pull. 525.

16. Those who act under a jurisdiction given by Act of Parliament, must shew their jurisdiction.—*Probyn*, J., Rex *v.* Inhabitants of Stepney (1735), Burrow (Settlement Cases), 25.

    See 14, *above*; STATUTES, 19.

[1] Also to same effect, Farquharson *v.* Morgan, L. R. C. A. Q. B. D. (1894), Vol. 1, p. 552. See also Lawrence *v.* Wilcock (1840), 11 A. & E. 941; Lismore *v.* Beadle (1842), 1 Dowl. (N. S.) 566; Jackson *v.* Beaumont (1855), 11 Ex. 300; *Ex parte* Robertson (1875), 20 Eq. 733.

[2] Nor can jurisdiction be ousted by agreement: Scott *v.* Avery, 5 H. L. Ca. 811; see also Cumber *v.* Wane, 1 Sm. L. Ca. (8th ed.), p. 371, and authorities there collected. Nor except by express words or necessary implication: King *v.* Abbot (1783), 2 Doug. 552; Cates *v.* Knight (1789), 3 T. R. 442; Shipman *v.* Henbest (1790), 4 T. R. 116; Crisp *v.* Bunbury (1832), 8 Bing. 399; Jacobs *v.* Brett (1875), L. R. 20 Eq. 6; Oram *v.* Brearey (1877), 2 Ex. D. 346, overruled by Chadwick *v.* Ball (1885), 14 Q. B. 855.

Jurisdiction—*continued.*

17. It is of little importance how the jurisdiction originated, if it be found to exist.—*Turner*, L.J., Boyse *v.* Rossborough (1854), 23 L. J. Rep. Part 5 (N. S.) Ch. 535.

18. I shall not be afraid to exercise a jurisdiction I find established, and shall adhere to precedents.—*Lord Hardwicke*, L.C., Earl of Chesterfield *v.* Janssen (1750), 2 Ves. Sen. 158.

19. The rule is this: that wherever there is a decision of a Court of concurrent jurisdiction, the other Courts will adopt that as the basis of their decision, provided it can be appealed from. If it cannot be appealed from, then they will exercise their own judgment.—*Pollock*, C.B., Leech *v.* North Staffordshire Railway Co. (1860), 29 L. J. M. C. 155.

See below, 20; Judicial Decisions, 12, *and references there given.*

20. A Court of law is well justified, according to the comity of our Courts, in overruling the decision of another Court of co-ordinate jurisdiction.—*Brett*, M.R., Palmer *v.* Johnson (1884), L. R. 13 Q. B. D. 355.

See above, 19; Law, 53.

Jury.

1. take it to be the bounden duty of the Judge to lay down the law as it strikes him, and that of the jury to accede to it, unless they have superior knowledge on the subject.[1]—*Bayley*, J., Trial of Sir Francis Burdett (1820), 1 St. Tr. (N. S.) 130.

See Judges, 79.

2. Though a definition, or maxim in law, without an exception, it is said, is hardly to be found, yet this I take to be a maxim, without an exception: *ad quæstionem juris non respondent juratores; ad quæstionem facti non respondent judices.*[2]—*Lord Mansfield*, King *v.* Shipley (1784), 3 Doug. 169.

3. It is of the greatest consequence to the law of *England* and to the Subject, that the powers of the Judge and Jury are kept distinct: that the Judge determines the law, and the Jury the fact: and if ever they come to be confounded it will prove the confusion and destruction of

[1] Blackstone considers trial by jury as having been universally established amongst all the northern nations, and so interwoven in their very Constitution, that the earliest accounts of the one gives us also some traces of the other. — *Bl.* Vol. III., p. 349; *St. Com.* Vol. III., 8th ed., Bk. 5, c. 11, p. 532.

[2] *Ad questiones facti non respondent judices; ad questiones legis non respondent juratores:* Judges do not answer questions of fact; juries do not answer questions of law.—*Co. Litt.* 295.

Jury—*continued.*

the law of *England.*[1]—*Lord Hardwicke*, Rex *v.* Poole (1737), K. B. Cas. *temp.* Hardw. 28.[2]

See above, 1; *below* 8; EVIDENCE, 3.

4. The jury cannot find evidence: they must find facts.—*Lord Mansfield*, Rex *v.* Royce (1766), 4 Burr. Part IV., p. 2077.

See below, 14; EVIDENCE 11.

5. It is certainly a rule that the jury must find facts, and not merely evidence of facts.—*Buller*, J., Newling *v.* Francis (1789), 3 T. R. 198.

See 14, *below.*

6. It is the Court, not the jury, who are to determine the law.—*Aston*, J., Pillans *v.* Van Mierop (1764), 3 Burr. Part IV. 1675.

See 2, *above.*

7. I am as jealous of the rights of juries as of those of the Court.—*Lord Ellenborough*, Rex *v.* Hucks (1816), 1 Starkie, 522.

See 12, *below.*

8. The constitution trusts, that, under the direction of a Judge, they will not usurp a jurisdiction which is not in their province. They do not know, and are not presumed to know the law; they are not sworn to decide the law; they are not required to decide the law. If it appears upon the record, they ought to leave it there, or they may find the facts subject to the opinion of the Court upon the law. But further, upon the reason of the thing, and the eternal principles of justice, the jury ought not to assume the jurisdiction of the law. As I said before, they do not know, and are not presumed to know anything of the matter; they do not understand the language in which it is conceived, or the meaning of the terms.[3] They have no rule to go by but their affections and wishes. It is said, if a man gives a *right* sentence upon hearing one side only, he is a wicked Judge, because he is right by chance only, and has neglected taking the proper method to be informed; so the jury who usurp the judicature of law, though they happen to be right, are themselves wrong, because they are right by chance only, and have not taken the constitutional

[1] "The man, who laugh'd but once to see an ass
Mumbling to make the cross-grain'd thistles pass,
Might laugh again to see a jury chaw
The prickles of unpalatable law."
Dryden, "The Medal."

[2] See also Prudential Assurance Co. *v.* Edmonds, L. R. 2 App. Ca. 487; Metropolitan Railway Co. *v.* Jackson, L. R. 3 App. Ca. 193; Dublin, &c. Railway Co. *v.* Slattery, *id.* 1155. Also remarks of *Daniel*, J., in Mitchel *v.* Harmony, 13 Howard (U.S.) R. 142—145.

[3] *See* LAW, 1. It was chiefly in consequence of the discussion occasioned by this case (*The King* v. *Shipley*), that the legislature passed the statute 23 Geo. III. c. 60, entitled "An Act to remove Doubts respecting the Functions of Juries in Cases of Libel."

Jury—*continued.*

way of deciding the question.[1] It is the duty of the Judge, in all cases of general justice, to tell the jury how to do right, though they have it *in their power* to do wrong, which is a matter entirely between God and their own consciences.—*Lord Mansfield*, King *v.* Shipley (1784), 3 Doug. 170.

See also 3, *above; below*, 9, 10, 19, 25; EVIDENCE, 11; JUDGES, 52, *n.*; 76; POLITICS, 3; PROPERTY, 12; PUBLIC POLICY, 9.

9. I am sure from my experience of juries that, in a criminal case especially, they will obey the law as declared by the Judge; they will take the law from the Judge, whether they like it or do not like it, and apply it honestly to the facts before them.—*Lord Coleridge*, Reg. *v.* Ramsey (1883), 1 Cab. & Ell. Q. B. Rep. 133.

See above, 8; EQUITY, 14.

10. It is a strange, wild jurisdiction, where the jurors are judges both of law and fact, and ignorant country fellows[2] are to determine the nicest points of law.—*Wilmot*, J., Doe *v.* Roe[3] (1760), 2 Burr. Part IV. 1047.

See above, 8.

11. The moment juries or judges go beyond their functions, and take upon themselves to lay down the law or find the facts, not according to the law as it is, but according to the law as they think it ought to be, then the certainty of the law is at an end; there is nothing to rely upon; we are left to the infinite variety and uncertainty of human

[1] *See* ADMINISTRATION OF JUSTICE, 1; JUDGES, 36, 73.

[2] *See post, note to* MONEY, 3.

[3] The action, which was to recover land, began by "a declaration" at the suit of a fictitious plaintiff (John Doe) against a fictitious defendant (Richard Roe), that a lease for a term of years having been made to Doe by A. (the real claimant of the land) and Doe having entered thereon, Roe ousted him, and Doe claimed damages. A notice to appear was at the same time given to B. the real tenant in possession, who on receipt of this would appear and defend: otherwise judgment would be given against the casual ejector (Roe) who would make no defence. On the tenant (B.) appearing, he signed a "consent rule" by which he confessed that he was in possession and that he had ejected the plaintiff. Then the issue was sent to trial, as an action at the suit of Doe on the demise of A. against B., and the point at issue would be whether A. had a right to demise on the day in question; in fact A. had to prove his title. — See *Steph. Comm.* Vol. III., Bk. 5, c. viii. 405. See also the following: "My brother *Shepherd* states it to be the practice to put any names into the writ, as *John Doe*; which is very intelligible; the writ here is only the process by which this defendant was brought into Court, and the notice of declaration given afterwards is right. If *John Doe* be ever joined in the writ with the real defendant, it follows that proceedings are not to be stayed because two names appear in the writ, and one only in the declaration; for *John Doe* is never inserted in the declaration."—*Eyre*, C.J., Spencer *v.* Scott (1797), 2 Bos. & Pull. 19. Again, "We will not distinguish between *John Doe* and a real defendant, in order to raise an objection."—*Per Cur.* in Stables and another *v.* Ashley and others (1797), 2 Bos. & Pull. 50.

Jury—*continued.*

opinion; to caprice which may at any moment influence the best of us, to feelings and prejudices, perhaps excellent in themselves, but which may distort or disturb our judgment, and distract our minds from the single simple operation of ascertaining whether the facts proved bring the case within the law as we are bound to take it.—*Lord Coleridge*, Reg. *v.* Ramsey (1883), 1 Cab. & Ell. Q. B. Rep. 134.

See below, 25; DISCRETION, 4; EQUITY, 31, *n.*; MOTIVES, 11.

12. You all very well know what deference I always pay, and ever will, to that part of the office of a jury which properly belongs to them. In regard to the law, I have always been as tenacious of the proper function of a Judge, as I have been of that of the jury. I never will, while I have the honour of executing the office of a Judge, attempt to controul or influence their minds in respect of damages; but only submit to them such observations as occur to me upon the evidence. —*Wilmot*, L.C.J., Wilkes *v.* Lord Halifax (1763), 19 How. St. Tr. 1410.

See 7, *above.*

13. It will be your verdict, and not the verdict of the Court; we are responsible for the law, it is our duty to state the law, and I have laid down principles from great authority.—*Earl of Clonwell*, L.C.J., Jackson's Case (1795), 25 How. St. Tr. 871.

14. The best way in which a jury can execute their duty is to give their verdict according to the evidence before them.—*Rooke*, J., Trial of Redhead *alias* Yorke (1795), 25 How. St. Tr. 1149.

See 4, 5, *above.*

15. If I were master of eloquence I would not make the decision of this cause a stage upon which I would display that eloquence. Those things which are very proper for advocates to do,[1] become very improper for the Judge, who has nothing to do, but to state to the jury the short grounds upon which the cause ought to proceed.—*Lord Kenyon*, Eaton's Case (1793), 22 How. St. Tr. 820.

See COUNSEL, 13, *n.*

16. Our trials by juries are of such consideration in our law that we allow their determination to be best and most advantageous to the subject; and therefore less evidence is required than by the civil law. So said Fortescue in his commendation of the laws of England.—*Holt*, L.C.J., Vaughan's Case (1696), 13 How. St. Tr. 535.

See TRIAL FOR LIFE, 1.

[1] On the subject of forensic eloquence, see the Author's treatise on the Law and Privileges relating to Colonial Attorneys-General, p. 53.

Jury—*continued.*

17. Upon trials, the jury ought not to have any evidence laid before them but what is proper.—*Probyn*, J., Rex *v.* Inhabitants of Preston upon the Hill (1736), Burrow (Settlement Cases), 85.

See EVIDENCE, 10, 11.

18. *Le direction del Judge in civil pleas doit estre hypothetic, si le fait soit trove tiel, donque pur le plaintiff ou defendant, mes ne unques positive ou coercive, ne le jury finable:* The direction of the Judge in civil pleas ought to be hypothetick, if the fact be found such, then for the plaintiff or defendant, but never positive or coercive, nor is the jury finable.—*Vaughan*, L.C.J., Bushel's Case (1670), Jones's (Sir Thos.) Rep. 16.

19. *Le jury est perjure si le verdict soit contra lour proper judgment, coment per direction del Court, car lour serement oblige eux al lour judgment proper:* The jury is perjured if the verdict be against their own judgment, tho' by direction of the Court, for their oath obliges them to their own judgment.[1]—*Vaughan*, L.C.J., Bushel's Case (1670), Jones's (Sir Thos.) Rep. 17.

See above, 8; CONTEMPT OF COURT, 10.

20. *Est le duty dun Judge de examiner le Jury, et de Juror al responder, et si ne voet respondre, ou rendra verdict contr' lour response, en lun et lauter case, il est finable:* It is the duty of a Judge to examine the Jury, and of a Juror to answer, and if he will not answer, or shall give a verdict contrary to their answer, in either case he is finable.[2]—*Vaughan*, L.C.J., Bushel's Case (1670), Jones's (Sir Thos.) Rep. 15.

See CONTEMPT OF COURT, 2, 4.

21. We do not desire that the unanimity of a jury should be the result of anything but the unanimity of conviction. It is true that a single juryman, or two or three constituting a small minority, may, if their own convictions are not strong and deeply rooted, think themselves justified in giving way to the majority. If is very true, if jurymen have only doubts or weak convictions, they may yield to the stronger and more determined view of their fellows; but I hold it to be of the essence of a juryman's duty, if he has a firm and deeply rooted conviction, either in the affirmative or the negative of the issue he has to try, not to give up that conviction, although the majority may be against him, from any desire to purchase his freedom from confinement or constraint, or the various other inconveniences to

[1] Hob. 227; Cro. Eliz. 416; 26 Hen. VIII. cap. 4.

[2] Bract. 289.

Jury—*continued.*

which jurors are subject.—*Cockburn*, J., Winsor *v.* The Queen (1866), L. R. 1 Q. B. Ca. 305.

See also 23, 29, 30, *below.*

22. In my mind, he was guilty of no error, he was chargeable with no exaggeration, he was betrayed by his fancy into no metaphor, who once said, that all we see about us, Kings, Lords, and Commons, the whole machinery of the State, all the apparatus of the system, and its varied workings, end in simply bringing twelve good men into a box.[1] —*Lord Brougham* (1828), *Present State of the Law* (Feb. 7).

See Liberty of the Press, 8; Trial for Life, 1.

23. There is no distinction between a good jury and a common jury.—*Buller*, J., King *v.* Perry (1793), 5 T. R. 460.

See 21, *above.*

24. It is infinitely better that a cause should be tried upon a view had by any twelve than by six of the first twelve; or by any six; or by fewer than six; or even without any view at all, than that the trial should be delayed from year to year, perhaps for ever: it can never be proper or necessary to grant a view which is asked and used for so unjust a purpose.[2]—*Lord Mansfield* (1765), 1 Burr. Part IV. 254.

25. It is and must be admitted, that publications which are calculated with a view to prejudice the minds of men who ought to come to compose a jury, without any pre-conceived opinions to decide upon the subject—I say it must be admitted that any publications of that kind, whether made by the party interested in the question, or by strangers, is sufficient reason to put off the trial of the cause, in order that the minds of those who are to decide may return to a proper tone, and that they may not be put into a situation which no man sitting in judgment ought to be in, namely, having formed a prior opinion upon the point; for that juryman would be extremely disgraced who should put himself into that box, having made up his mind upon that subject before he heard it discussed; *non sum doctus rere instructus* is the language a juryman ought to hold; he ought to have no wishes in the matter.[3]—*Kenyon*, L.C.J., Proceedings against the Dean of St. Asaph (1783), 21 How. St. Tr. 869.

See above, 8, 11; Judges, 48, *n.*; 58, 82.

[1] In all criminal causes, the most regular and safe way, and most consonant to the statutes of *Magna Charta*, cap. 29; 5 Ed. III. cap. 9; 25 Ed. III. cap. 4; 28 Ed. III. cap. 3; *et* 42 Ed. III. cap. 3, is by presentment or indictment of twelve sworn men.—*Hale*, "Pleas of the Crown," Vol. II. 151.

[2] Upon the granting of rules for views in Civil Causes.

[3] *Pratt*, L.C.J.: And there is, too, an examination in print; that ought not to

Jury—*continued.*

26. I have always told a jury that if a fact is fully proved by two witnesses it is as good as if proved by a hundred.—*Buller*, J., Calliand *v.* Vaughan (1798), 2 Bos. & Pull. 212.

See also AFFIDAVIT, 2; EVIDENCE, 29, 30; TRIAL FOR LIFE, 1; WITNESS, 3.

27. The jury can't find a negative, unless such an one as is proved by an affirmative.—*Lord Mansfield*, Harwood *v.* Goodright (1774), Lofft. 567.

28. Challenges being for the sake of justice, they are greatly favoured in the law.[1]—*Per Cur.*, Kynaston *v.* Mayor of Shrewsbury (1737), Andrews' Rep. 87.

29. I have had the honour of being a considerable time on the bench; I cannot now pretend to bear fatigue as well as formerly, but I hope I shall take care that the jurors or myself shall not be in danger of being destroyed.[2]—*Ward*, J., Trial of Mary Heath (1744), 18 How. St. Tr. 23.

See 21, *above.*

30. We are all desirous to sit as long as we can, but necessity justifies that which it compels; the strength of man is not adequate to this. Lord Mansfield, as little inclined to give way as any man, did give way at a certain hour in the case of Lord Pomfret.—*Lord Kenyon*, Stone's Case (1796), 25 How. St. Tr. 1290.

See CRIMINAL JUSTICE, 43; NECESSITY, 2; MISCELLANEOUS, 56; TIME, 3, *n.*

31. We have a duty to discharge to the individual as well as to the public. We cannot make a man serve at the hazard of his life.[3] —*Pennefather*, L.C.J. (1843), Queen *against* O'Connell, 5 St. Tr. (N. S.) 86.

be, and the person that did it ought to be censured; are juries to be prepossessed; here is a printed pamphlet, whereof the title is "Mr. Lutterell's Cry for Justice."

Mr. Hungerford: I never saw it, but am told it is most in favour of the prisoner at the bar.

Pratt, L.C.J.: If the examination is true, it ought to be produced, and the prisoners ought to come fairly to their trial, and, if guilty, God forbid that they should suffer, but not by passionate insinuations in print; *and it is an unprecedented thing*, and if it comes out who did it, I shall take a course with them: it is a way of preventing all manner of justice.—*Lutterell's Case* (1722), 16 How. St. Tr. 33.

[1] Co. Litt. 158 a.; 3 Keb. 740.

[2] The hungry judges soon the sentence sign,
And wretches hang, that jurymen may dine.
—*Pope*, "The Rape of the Lock." Canto III. L. 21.

[3] "Mr. Plumer, if you seek for a resting place in a course so complicated and extensive as this, you may freely choose it for yourself."—*Thomas, Lord Erskine*, L.C. (addressing counsel for the defendant), Trial of Lord Viscount Melville (1806), 29 How. St. Tr. 1249.

Justice.

1. Justice must not give way to policy.—*Hotham,* L.C., Prideaux *v.* Prideaux (1784), 1 Cox, Eq. Ca. 36.

   See also Politics, 2; Public Policy, 9.

2. Uncertain justice by a verdict is much better than certain injustice.[1] —*Lord Mansfield,* Cases in the King's Bench (1773), Hilary Term, 13 Geo. III., Lofft. 147.

   See also Judges, 42.

3. There is not in this country one rule by which the rich are governed, and another for the poor. No man has justice meted out to him by a different measure on account of his rank or fortune, from what would be done if he were destitute of both. Every invasion of property is judged of by the same rule; every injury is compensated in the same way; and every crime is restrained by the same punishment, be the condition of the offender what it may. It is in this alone that true equality can exist in society.[2]—*Buller,* J., Trial of O'Coigly and others (1798), 26 How. St. Tr. 1193.

   See also Judges, 38, 74, 81; Justice, 3; Law, 19, 31; Poor, 3; Protection, 2; Punishment, 6; Rights, 4; Tort, 6; Trespass, 2.

4. It is the right of her Majesty's subjects to make claims and to have them tried in the constitutional way.—*Kekewich,* J., Birmingham and District Land Co. *v.* London and North-Western Railway Co. (1888), 57 L. J. Rep. (N. S.) C. D. 123.

   See Equity, 36; Law, 66; Parliament, 9; Relief, 3; Tort, 8.

5. The humanity of the Court has been loudly and repeatedly invoked. Humanity is the second virtue of Courts, but undoubtedly the first is Justice.—*Sir Wm. Scott,* Evans *v.* Evans (1790), 1 Hagg. Con. Rep. 36.

   See Law, 33; Pardon, 1, *n.*

6. When the Court see reason to suspect that justice has not been done to any particular defendant, they will in their discretion direct a further enquiry into the merits of the cause.—*Ashhurst,* J., The King *v.* Holt (1793), 5 T. R. 444.

   See Appeals, 1; Contempt of Court, 5, 10; Judicial Proceedings, 6, *n.*; New Trial, 2, 3.

Justification.

1. There are a thousand things might have been a justification.—*Lord Mansfield,* The King *v.* Williams (1774), Lofft. 762.

[1] *Lex vult potius privatum incommodum quam publicum malum.*

[2] The law is well known, and is the same for all ranks and degrees.—*Sir Wm. Blackstone* (1765), Com. Bk. III., ch. 25, p. 379.

Justification—*continued.*

2. Is ill-language a justification for blows?—*Pratt*, C.J., Case of Hugh Reason and another (1722), 16 How. St. Tr. 44.

See WORDS, 4.

Land.

Generally speaking, no young tree is allowed to stand on copyhold land.[1] —*Coke*, 3rd Rep. 15.

See FREEHOLD.

Law.

1. It is my province to lay down the law. Every lawyer knows that the law is the result of a great deal of learning.[2]—*Erle*, J., Queen *v.* Dowling (1848), 7 St. Tr. (N. S.) 438.

See COUNSEL, 15; FOREIGN LAW, 3; JURY, 8.

2. The law does not consist in particular instances, though it is explained by particular instances and rules, but the law consists of principles, which govern specific and individual cases, as they happen to arise.[3] —*Lord Mansfield*, R. *v.* Bembridge (1783), 22 How. St. Tr. 155.

See also 3, 53, *below;* CASES, 9, 21; COMMON LAW, 12; JUDGES, 70; JUDICIAL DECISIONS, 9.

3. Law grows, and though the principles of law remain unchanged, yet (and it is one of the advantages of the common law) their application is to be changed with the changing circumstances of the times.[4]

[1] Hence the maxim, that "the oak scorns to grow except on free land."

[2] We may appeal to the experience of every sensible lawyer, whether anything can be more hazardous or discouraging than the usual entrance on the study of the law.—*Sir Wm. Blackstone*, Com. Bk. I., sec. I, p. 16.

Reading, maketh a full man, conference a ready man, and writing an exact man;—and, therefore, if a man write little, he had need have a great memory; if he confer little, he had need have a present wit; and if he read little, he had need have much cunning to seem to know that he doth not.—*Lord Bacon.*

"I had heard much of ——," said an eminent person to the author, alluding to a young man who had recently entered public life, "and was disposed to think well of him, till I heard him say that for the last four years he had READ *fourteen hours* a day! I have never thought anything of him since." From that time, whatever I have seen or known of him, has convinced me that he spoke truly.—*Warren*, "Study of the Law."

I cannot say the law was ever a hard mistress to me; and she did not allow me long to languish in idleness, nor ever suffer me to be without hope. But, of course, I had many idle days, and I was rather fond of note-taking as a very instructive practice, whenever the case was an interesting one, and I found great benefit from it when the facility of taking an accurate and full note rapidly became of the greatest importance in the course of my after life at the Bar and on the Bench.—*Right Hon. Sir John T. Coleridge*, "Circuit Reminiscences." *The Jur.* (N. S.) Vol. V. and VI., Part 2 (1859—1860), p. 377. *See also post*, LAW REPORTS, 3, *n.*

[3] See this quoted in *Lord Melville's Case* (1806), 29 How. St. Tr. 1383.

[4] *Leges posteriores priores, contrarias abrogant:* Subsequent laws repeal prior contrary laws.—11 *Co.* 626.

Law—*continued.*

Some persons may call this retrogression, I call it progression of human opinion.—*Lord Coleridge*, Reg. *v.* Ramsey (1883), 1 Cababé and Ellis' Q. B. D. Rep. 135.

See 2, *above;* COURT LEET; PARLIAMENT,, 3 *n.*

4. The truth is . . . the old feudal law existing in *England* . . . is only being broken down slowly by legislation and decisions of the Court, and . . . still exists to a very great extent.—*Kay*, J., Whitby *v.* Mitchell (1889), L. R. 42 C. D. 500.
5. There is no positive law: Many things are bad by that, which otherwise were not.—*Lord Mansfield*, Jones *v.* Randall (1774) Lofft. 386.
6. No man can come into a *British* Court of justice to seek the assistance of the law who founds his claim upon a contravention of the *British* laws.—*Lord Alvanley*, C.J., Morck *v.* Abel (1802), 3 Bos. and Pull. 38.

See 24, *below;* CRIMINAL JUSTICE, 51.

7. That whom he could not by the sword destroy, he might supplant by the law.—*Hobart*, C.J., Sheffeild *v.* Ratcliffe (1614), Lord Hobart's Rep. 335.

See HOSTILITY.

8. *Contemporaria expositio legis est optima*, a contemporary exposition of a law, if there be any question about it, as our books tell us, is always the best, because the temper of the law-makers is then best known.—*Holt*, C.J., Harcourt *v.* Fox (1693), Shower's Rep. 326.
9. I am sorry to think, that Englishmen should seem to excuse themselves by ignorance of the law, which all subjects are bound to know, and are born to have the benefit of.—*Popham*, C.J., Trial of Sir Christopher Blunt and others (1600), 1 How. St. Tr. 1450.

See below, 69.

10. He had no right to take the law into his own hands.—*Lord Kenyon*, Tarleton *v.* McGawley (1795), 2 Peake, N. P. Ca. 208.

See JUDGES, 44.

11. Every one must be supposed to be cognizant of a public law.—*Lord Ellenborough*, Smith *v.* Beadnell (1807), 1 Camp. 33.
12. Every man (who is of sufficient understanding to be responsible for his actions) is supposed to be cognizant of the law, as it is the rule by which every subject of the kingdom is to be governed, and therefore it is his business to know it.—*Willes*, J., King *v.* Shipley (1784), 3 Doug. 177.
13. Every man must be taken to be cognizant of the law, otherwise there is no saying to what extent the excuse of ignorance may not be

Law—*continued.*

carried. It would be urged in almost every case.—*Lord Ellenborough*, Bilbie *v.* Lumley (1802), 2 East, 469.

See below, 14.

14. *Ignorantia juris non excusat.*[1] The true meaning of that maxim is that parties cannot excuse themselves from liability from all civil or criminal consequences of their acts by alleging ignorance of the law, but there is no presumption that parties must be taken to know all the legal consequences of their acts, and especially where difficult questions of law, or of the practice of the Court are involved.[2]—*Lord FitzGerald*, Seaton *v.* Seaton (1888), L. R. 13 Ap. Ca. 78.

See above, 13; JUDGES, 77; PRACTICE, 1; PRESUMPTION, 12.

15. A mere evasion, colour, disguise and device to evade the law.—*Lord Mansfield*, Sulfton *v.* Norton (1761), 3 Burr. Part IV., p. 1237.

16. It has been said that ignorance of law is no excuse, but when the Court has a discretion the petitioner's ignorance of the law may be properly excused.—*Barnes*, J., Whitworth *v.* Whitworth and Thomasson (1893), 62 L. J. Rep. P.C.C. (1893), p. 73.

17. Very happily, the more the law is looked into, the more it appears founded in equity, reason, and good sense.[3]—*Lord Mansfield*, James *v.* Price (1773), Lofft. 221.

See 52, *below*; PRECEDENTS, 4.

18. It being a maxim that three things are always favoured in law, life, liberty and dower.—*Per. Cur.*, Dumsday *v.* Hughes (1803), 3 Bos. and Pull. 456.

See LIBERTY OF THE SUBJECT, 1; TRIAL FOR LIFE, 1.

[1] 1 *Co.* 177. See also *per Lord Westbury* as to this maxim, Cooper *v.* Phibbs, L. R. 2 H. L. 170; also *per Stirling*, J., Allcard *v.* Walker, L. R. 2 C. D. [1896], p. 381.

[2] *Lord Westbury* in Spread *v.* Morgan (11 H. L. C. 602), dealing with a question of election thus puts it: "It is true as a general proposition that knowledge of the law must be imputed to every person, but it would be too much to impute knowledge of this rule of equity" (the rule which applies to election); "election as a question of intention of course implies knowledge."—*Id.*

[3] *Lex est sanctio justa jubens honesta et prohibens contraria.*

Lex est summa ratio.

Ratio est anima legis.

Nulla vetita aut turpia præsumuntur, sed contraria omnia legitima atque honesta.

"The common lawe itselfe is nothing else but reason; which is to be understood of an artificiall perfection of reason, gotten by long study, observation, and experience, and not of every man's natural reason; for *nemo nascitur artifex.* This legall reason est *summa ratio.* And therefore if all the reason that is dispersed into so many severall heads, were united into one, yet could he not make such a law as the law of England is, because by many successions of ages it hath been fined and refined by an infinite number of grave and learned men, and by long experience growne to such a perfection, for the gouvernment of this realme, as the old rule may be justly verified of it, *neminem oportet esse sapientiorem legibus:* no man,

Law—*continued.*

19. The laws alone are they that always speak with all persons, high or low, in one and the same impartial voice. The law knows no favourites.—*Sir Robert Atkyns*, L.C.B., Trial of Sir Edw. Hales (1686), 11 How. St. Tr. 1206 n.

See also below, 31, 32; JUDGES, 27, 74; JUSTICE, 3, *n.*; POOR, 3; PUNISHMENT, 6; RIGHTS, 4; TORT, 6.

20. The law would be a strange science if it rested solely upon Cases; and if after so large an increase of Commerce, Arts and Circumstances accruing, we must go to the time of *Rich.* I. to find a Case and see what is law.[1]—*Lord Mansfield*, Jones *v.* Randall (1774) Lofft. 386.

See PRESUMPTION, 7; USAGE, 1, 8.

21. It is far more important the law should be administered with absolute integrity, than that in this case or in that the law should be a good law or a bad one.—*Lord Coleridge*, Reg. *v.* Ramsey (1883), Cababé and Ellis' Q. B. D. Rep. 134.

See STATUTES, 7.

22. Every object and purpose of justice is effectually answered, and every supposed inconvenience is effectually rebutted by the law as it stands.—*Bayley*, J., King *v.* Woolf (1819), 1 Chit. 423.

See CONSTRUCTION, 28; EQUITY, 10; JUDGES, 28; STATUTES, 3, 9.

23. Sometimes rhetorical phrases are applied even by eminent Judges to propositions of law. In Lord Dungannon *v.* Smith[2] *Lord Brougham* in eloquent language declared it as "*one of the corner stones of the law*," and I understand the Lord Chancellor in the same case to have considered the decision in Jee *v.* Audley[3] to be "*one of the landmarks.*"—*Chitty*, J., *In re* Dawson; Johnston *v.* Hill (1888), L. R. 39 C. D. 152.

See 15, *above;* 26, 28, 43, 50, 54, 75, *below;* COURTS, 1; FRAUD, 26; JUDGES, 26, *n.*

24. I cannot help thinking that where a person appeals to the Law of England, he must take his remedy according to the Law of England to which he has appealed.—*Wilmot*, J., Robinson *v.* Bland (1760), 2 Burr. Part IV. 1084.

See 6, *above;* CONTRACT, 4; FOREIGN LAW, 5; TORT, 1.

out of his own private reason, ought to be wiser than the law, which is the perfection of reason."—*Lord Coke's Praise of the Law of England. See also post*, MISCELLANEOUS, 6.

[1] The sparks of all the sciences in the world are raked up in the ashes of the law.—*Finche*, L. b. 1, c. 3.

[2] 12 Cl. & F. 631.

[3] 1 Cox, 324.

Law—*continued.*

25. The law is not apt to catch at actions.—*Powys*, J., Ashby *v.* White (1703), 2 Ld. Raym. 944.

See also JUDGES, 12; WORDS, 3.

26. It was nobly said in another place (I heard it with pleasure, and thought it becoming the dignity of the person who pronounced it, and the place in which it was pronounced) "*that the law is best applied, when it is subservient to the honesty of the case.*"—*Buller*, J., Master *v.* Miller (1791), 4 T. R. 335.

See also, 23 *above;* ADMINISTRATION OF JUSTICE, 17; JUDGES, 13; USAGE, 13.

27. It is of very little consequence to the public to lay down *definite* rules of *law*, if you have *indefinite* rules of *evidence.*—*Thurlow*, L.C., Fox. *v.* Mackreth (1788), 2 Cox, 320.

28. It has been sometimes said, *communis error facit jus;* but I say *communis opinio* is evidence of what the law is; not where it is an opinion merely floating and theoretical floating in the minds of persons but where it has been made the ground-work and substratum of practice.[1]—*Lord Ellenborough*, Isherwood *v.* Oldknow (1815), 3 M. & S. (K. B. Rep.) 396, 397.

See 23, *above.*

29. Judges could by their resolution alter the practice, but never the law.—*Blackburn*, J., Reg. *v.* Charlesworth (1861), 9 Cox, C. C. 67.

See below, 71; JUDGES, 7, 13, 35, 36, 37; PARLIAMENT, 12; STATUTES, 15, 18.

30. Law and conscience are one and the same.—*Bacon*, J., Watson *v.* Watson (1670), Style's Rep. 56.

31. The law is for the protection of the weak more than the strong.—*Erle*, J., Reg *v.* Woolley (1850), 4 Cox, C. C. 196.

See 19, *above;* 32, *below;* JUSTICE, 3; PROTECTION, 2.

32. The law protects nothing in that very respect, in which it is, at the same time, in the eye of the law, a crime.—*Lord Mansfield*, Evans *v.* The Chamberlain of London (1720), (App. to *Furneaux's* Letters), 2 Burn's Eccl. Law, 207; Harrison *v.* Evans (in Error) 6 Bro. P. C. 181.

See 31, *above;* TORT, 6; TRESPASS, 2.

33. The law of England will not sanction what is inconsistent with humanity.—*Best*, J., Ilott *v.* Wilkes (1820), 4 B. & A. 319.

See JUSTICE, 5.

[1] The law rarely hesitates in declaring its own meaning; but the Judges are frequently puzzled to find out the meaning of others.—*Sir Wm. Blackstone* (1765)

Law—*continued.*

34. The law does not act vindictively.—*Bacon*, V.-C., Barrett *v.* Hammond (1879), L. R. 10 C. D. 289.

35. The law has respect to human infirmity.—*Best*, C.J., Robertson *v.* McDougall (1828), 4 Bing. 679.

See CHRISTIANITY, 12, *n.*; MISCELLANEOUS, 53; REASONABLE, 3.

36. We cannot judge of the fact, but the law upon the fact.—*Pratt*, J., Rex *v.* Inhabitantes de Haughton (1718), 1 Str. Rep. 84.

37. As a lawyer I am before and above all things for the supremacy of law.—*Lord Coleridge*, C.J., The Queen *v.* Bishop of London (1889), L. R. 23 Q. B. 452.

See 54, *below;* COURTS, 14; CRIMINAL JUSTICE, 40; JUDGES, 29.

38. A Court has no right to strain the law because it causes hardship. —*Lord Coleridge*, C.J., Body *v.* Halse (1891) L. R. 1 Q. B. [1892], p. 207.

See 40, *below.*

39. Your lordships must look hardships in the face rather than break down the rules of law.—*Lord Eldon*, C., Berkeley Peerage Case (1811), 4 Camp. 419.

See PRECEDENTS, 7.

40. I would wish to do as much as possible for you; but I cannot strain the law.[1]—*Earl of Clonwell*, L.C.J., Jackson's Case (1795), 25 How. St. Tr. 879.

See 38, *above;* JUDGES, 4, 37, 40, 44.

41. It is a principle of law, that a person intends to do that which is the natural effect of what he does.—*Lord Ellenborough*, Beckwith *v.* Wood and another (1817), 2 Starkie, 266.

See FRAUD, 2; ILLEGALITY; PRESUMPTION, 2; PLEADINGS, 4; TORT, 16.

42. Hard cases, it is said, make bad law.[2]—*Lord Campbell*, C.J., *Ex parte* Long (1854), 3 W. R. 19.

See MISCHIEF, 1, *n.*

43. All arguments on the hardship of a case, either on one side or the other, must be rejected, when we are pronouncing what the law is; for such arguments are only quicksands in the law, and, if indulged,

Com. Bk. III., ch. 25, p. 336. *See also antè*, CONSTRUCTION, 3; WILL, 2, 6; WORDS, 5, 6.

[1] What I desire to point out is that I wish the law was not so, but that being the law, I must follow it.—*Romer*, J., Davies *v.* Parry (1899), 1 L. R. C. D. 605. There is no worse torture than the torture of laws.—*Lord Bacon*, fo. edit. Vol. I. 440, 441.

[2] Hard cases, it has been frequently observed, are apt to introduce bad law.—*Wolfe*, B., Winterbottom *v.* Wright (1842), 10 Meeson & Welsby, 116.

Law—*continued.*

will soon swallow up every principle of it.[1]—*Buller*, J., Yates *v.* Hall, (1785), 1 T. R. 80.

See 23, *above;* CONSTRUCTION, 28.

44. General laws cannot give way to particular cases.—*Ashhurst*, J., King *v.* The College of Physicians (1797), 7 T. R. 290.

See CASES, 20; FOREIGN LAW, 5.

45. We must not, by any whimsical conceits supposed to be adapted to the altering fashions of the times, overturn the established law of the land: it descended to us as a sacred charge, and it is our duty to preserve it.—*Lord Kenyon*, C.J., Clayton *v.* Adams (1796), 6 T. R. 605.

See JUDGES, 36, 41; USAGE, 13.

46. We must proceed according to evidence, and forms and methods of law; they may think what they will of me, but I will always declare my mind according to my conscience.[2]—*Wright*, L.C.J., Trial of the Seven Bishops (1688), 12 How. St. Tr. 344.

See JUDGES, 10, 37, 66; POLITICS, 3.

47. The law of England is a law of liberty.[3]—*Lord Ellenborough*, Wm. Cobbett's Case (1804), 24 How. St. Tr. 49.

See LIBERTY OF THE PRESS, 7.

48. The law of England is a law of mercy.—*Coke*, 2 Inst. 315.[4]

See ADMINISTRATION OF JUSTICE, 32; CRIMINAL JUSTICE, 4, 25; PARDON, 3; PUNISHMENT, 5; TRIAL FOR LIFE, 1.

49. If the law be thought to be improper or inconvenient, application to correct it must be made elsewhere, and not to those who are bound by the repeated and solemn judgments of their predecessors.—*Buller*, J., Bishop of London *v.* Ffytche (1800), 1 East, 495.

See below, 62; FOREIGN LAW, 5; JUDGES, 33, 66; PARLIAMENT, 12, 14; STATUTES 13.

50. No person is less disposed than I am to accommodate the law to the particular convenience of the case: but I am always glad when I find the strict law and the justice of the case going hand in hand together.—*Lord Kenyon*, C.J., Peaceable *v.* Read and others (1801), 1 East. 573.

See 23, 49, *above;* EQUITY, 8; LIBERTY OF THE SUBJECT, 3.

[1] I agree that is the law, though I think it is a hard law; but we have nothing to do with the question of hardship.—*Lord Esher*, M.R., *In re* Perkins (1890), L. R. 24 Q. B. D. 618.

[2] See also *Johnson's Case* (1805), 29 How. St. Tr. 451, 453:—

"*Lord Ellenborough*, L.C.J.: No; we ought not to do anything by presumption here.

Powell, J.: No, by no means, we must not go by presumptions, but proofs.

Lord Ellenborough, L.C.J.: We must proceed according to evidence and forms, and methods of law."

[3] *Angliæ jura in omni casu libertatis dant favorem:* The laws of England in every case of liberty are favourable.—*Fortesc.* c. 42.

[4] *Lex Angliæ est lex misericordiæ.*

Law—*continued.*

51. What is ridiculous and absurd never is, to my mind, to be adopted either in law or in equity.—*Brett*, M.R., *In re* Garnett; Gandy *v.* Macaulay (1885), L. R. 31 C. D. 9.

52. I think the law is generally reasonable.—*Cotton*, L.J., Bidder *v.* Bridges (1887), L. J. 57 C. D. 304.

See 17, *above;* REASONABLE, 1.

53. Now when a rule of law which is against principle is alleged to be established, there are two points to be considered; first of all, was any such rule of law ever laid down by any Judge? That is the first point to be decided; and secondly, if it was so laid down, has it passed into a binding rule of law?—that is, has it been so recognised and dealt with by subsequent Judges as to prevent a Judge of a tribunal of co-ordinate jurisdiction from saying that the decision is contrary to the course of law, and is not binding upon him.—*Jessel*, M.R., Henty *v.* Wrey (1882), L. R. 21 C. D. 340.

See 2, *above;* 63, *below;* CASES, 9, 21; CONSTRUCTION, 13; JUDICIAL DECISIONS, 12, 16, 17; JURISDICTION, 4, 20; PRECEDENTS, 18.

54. The picture of law triumphant and justice prostrate, is not, I am aware, without admirers. To me it is a sorry spectacle. The spirit of justice does not reside in formalities, or words, nor is the triumph of its administration to be found in successfully picking a way between the pitfalls of technicality. After all, the law is, or ought to be, but the handmaid of justice, and inflexibility, which is the most becoming robe of the latter, often serves to render the former grotesque. But any real inroad upon the rights and opportunities for defence of a person charged with a breach of the law, whereby the certainty of justice might be imperilled, I conceive to be a matter of the highest moment.—*Lord Penzance*, Combe *v.* Edwards (1878), L. R. 3 P. D. 142.

See 23, 37, *above;* CRIMINAL JUSTICE, 3, 37; PRECEDENTS, 20, *and references therefrom.*

55. Whatever disadvantages attach to a system of unwritten law, and of these we are fully sensible, it has at least this advantage, that its elasticity enables those who administer it to adapt it to the varying conditions of society, and to the requirements and habits of the age in which we live, so as to avoid the inconsistencies and injustice which arise when the law is no longer in harmony with the wants and usages and interests of the generation to which it is immediately applied.—*Cockburn*, C.J., Wason *v.* Walter (1868), L. R. 4 Q. B. 93.

See 62, *below;* ADMINISTRATION OF JUSTICE, 15; CHANCERY, 1, *n.*, 10; COMMON LAW, 4; CONSTRUCTION, 28; PARLIAMENT, 3, *n.*; STATUTES, 13.

Law—*continued.*

56. You say well: the law of God is the law of England; and you have heard no law else, but what is consonant to the law of reason, which is the best law of God; and here is none else urged against you.—*Keble*, C.J., Lilburne's Case (1649), 4 How. St. Tr. 1307.

See 57, *below;* CHRISTIANITY, 5, 8; RELIGION, 1.

57. God made man, and gave him a law to live by; and the laws of England are grounded on the laws of God: and in the laws of England every man is concerned.—*Garmond*, J., Streater's Case (1653), 5 How. St. Tr. 387.

See 56, *above, and references.*

58. Personally, I detest any attempt to bring the law into maxims. Maxims are invariably wrong, that is, they are so general and large that they always include something which is not intended to be included.—*Lord Esher*, M.R., Yarmouth *v.* France (1887), L. J. 57 Q. B. 9.

See DICTUM, 5; JUDGES, 65. *See also* RELIEF, 3.

59. There is no other power in England, but a legal power to punish according to law.—*Holt*, C.J., Duncombe's Case (1699), 13 How. St. Tr. 1077.

See ADMINISTRATION OF JUSTICE, 3, 4; COURTS, 10, 14; JUDGES, 19, 37; PROPERTY, 7; PUNISHMENT, 8.

60. Retrospective laws are, *primâ facie* of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law. *Leges et constitutiones futuris certum est dare formam negotiis non ad facta præterita revocari; nisi nominatim et de præterito tempore et adhuc pendentibus negotiis cautum sit.*[1]—*Willes*, J., Phillips *v.* Eyre (1870), L. R. 6 Q. B. 23.

61. Whatever place becomes the habitation of civilized men, there the laws of decency must be inforced.—*McDonald*, C.B., Rex *v.* Crunden (1809), 2 Camp. 89.

See below, 67; MORALS, 1; RELIEF, 2.

62. There is no law whatsoever but may be dispensed with by the Supreme Law-giver; as the laws of God may be dispensed with by God himself;

[1] *Nova constitutio futuris formam imponere debet non præteritis:* A new state of the law ought to affect the future, not the past.—2 *Inst.* 292.

Lex prospicit non respicit: The law looks forward, not backward.—*Jenk. Cent.* 284.

Omnis nova constitutio futuris temporibus formam imponere debet, non præteritis: Every new enactment should affect future, not past times.—2 *Inst.* 95.

Law—*continued.*

as it appears by God's command to Abraham, to offer up his son Isaac: so likewise the law of man may be dispensed with by the legislator, for a law may either be too wide or too narrow, and there may be many cases which may be out of the conveniences which did induce the law to be made; for it is impossible for the wisest lawmaker to foresee all the cases that may be, or are to be remedied, and therefore there must be a power somewhere, able to dispense with these laws.—*Herbert*, C.J., Hale's Case (1686), 11 How. St. Tr. 1196.

See 49, 55, *above;* ADMINISTRATION OF JUSTICE, 15; CHANCERY, 10; CRIMINAL JUSTICE, 29; NECESSITY, 1; STATUTES, 2.

63. If the law be so, there must be some just and honest reason for it, or else some universal settled rule of law upon which it is grounded.—*Holt*, C.J., Coggs *v.* Bernard (1704), Raym. 909.

See 53, *above;* 64, *below;* PARLIAMENT, 5.

64. If it is law, it will be found in our books. If it is not to be found there, it is not law.[1]—*Camden*, L.C.J., Case of Seizure of Papers (1765), 19 How. St. Tr. 1066.

See above, 63; MISCELLANEOUS, 57, *n.*; PRECEDENTS, 15.

65. You were speaking of the laws being in other tongues; those that we try you by are in English; and we proceed in English against you; and therefore you have no cause to complain.—*Michel*, J., Lilburne's Case (1649), 4 How. St. Tr. 1311.

See ADMINISTRATION OF JUSTICE, 11; JUDGES, 62; WILL, 8.

66. The laws of England will protect the rights of British subjects, and give a remedy for a grievance committed by one British subject upon another, in whatever country that may be done.—*Bayley*, J., Forbes *v.* Cochrane and Cockburn (1824), 2 St. Tr. (N. S.) 159.

See JUSTICE, 4; PARLIAMENT, 9; RELIEF, 3; TORT, 2, 8, 9.

67. A residence in a new country often introduces a change of legal condition, which imposes rights and obligations totally inconsistent with the former rights and obligations of the same persons.—*Lord Stowell*, The Slave Grace (1827), 2 St. Tr. (N. S.) 289; 2 Hagg. 94.

See above, 61.

68. The law of nature is that which God at the time of creation of the nature of man infused into his heart, for his preservation and direction; and this is *lex æterna*, the moral law, called also the law of

[1] *De non apparentibus, et non existentibus, eadem est ratio:* Things which do not appear are to be treated as the same as those which do not exist.—*Co.* "Shew me any law for that if you can, Mr. Williams, I know you are a lawyer."—*Jefferies*, L.C.J., Trial of John Hampden (1684), 9 How. St. Tr. 1057.

Law—*continued.*

nature.[1] And by this law, written with the finger of God in the heart of man, were the people of God a long time governed, before the law was written by Moses, who was the first reporter or writer of law in the world.—*Lord Coke*, Calvin's Case (1608), 4 Co. 21.

See GOVERNMENT; JUDICIAL PROCEEDINGS, 9.

69. Every moral man is as much bound to obey the civil law of the land as the law of nature.[2]—*Rooke*, J., Aubert *v.* Maze (1801), 1 Bos. & Pull. 375.

See above, 9; LITIGATION, 1; MORALS, 1, 3; RELIEF, 2.

70. If a man endeavours to obtain a repeal of those laws, which are conceived to be obnoxious, or the introduction of any laws which he believes to be salutary, if he does that legally, there is no objection to it.—*Bayley*, J., R. *v.* Hunt and others (1820), 1 St. Tr. (N. S.) 484.

See FREEDOM OF SPEECH; LIBERTY OF THE PRESS, 9; MINORITIES, 2.

71. The law has prescribed a particular method, and we cannot alter the law, nor prevent the inconveniences.—*Holt*, C.J., Tawney's Case (1703), 2 Raym. 1013.

See above, 29; CONSTRUCTION, 28; JUDGES, 34, *n.*; 35; PARLIAMENT, 12 STATUTES, 4.

72. *Sans fact conus, est impossible de scier la ley sur cest fact:* Without a known fact, it is impossible to know the law on that fact.—*Vaughan*, J., Bushel's Case (1670), Jones's (Sir Thos.) Rep. 16.

See CONSTRUCTION, 28; JUDICIAL DECISIONS, 19.

73. It would be of ill-consequence, to authenticate a body of laws, that have lain dormant for two hundred years.[3]—*Foster*, J., The King *v.* Bishop of Ely (1750), 1 Black. Rep. 59.

See CONSTRUCTION, 6; DOCTRINE, 1; JUDICIAL DECISIONS, 5, 20; PRACTICE, 5; PRECEDENTS, 1.

74. It is a public scandal when the law is forced to uphold a dishonest act.—*Lord Macnaghten*, Nordenfelt *v.* Maxim Nordenfelt &c. Co. (1894), L. R. App. Ca. Part 5, p. 573.

See PRECEDENTS, 15; PUBLIC POLICY, 7; RELIEF, 2.

75. Legality and oppression are not unknown to run hand in hand.—*Hawkins*, J., Roberts *v.* Jones; Willey *v.* Great Northern Railway Co. (1891), L. R. 2 Q. B. [1891], p. 203.

See 23, *above;* FRAUD, 35; PROCESS, 2; RELIEF, 2.

[1] Wing. Max. 1; Co. Litt. 11 b. "Laws of Nature, are God's thoughts thinking themselves out in the orbs and the tides."—*C. H. Parkhurst.*

[2] *Obedientia est legis essentia*: Obedience is the essence of law.—11 *Co.* 100. *Prudenter agit qui præcepto legis obtemperat:* He acts prudently, who obeys the command of the law.—5 *Co.* 49.

[3] *Dormiunt aliquando leges, nunquam moriuntur:* The laws sometimes sleep, never die.—2 *Inst.* 161.

Law Reports.

1. Do you think that a reporter has a right to supply or suppress any part of a judgment?[1]—*Lord Brougham*, Cadell *v.* Palmer (1833), 1 Cl. & F. 372.

   See also TEXT BOOKS, 2.

2. 'Tis pity that reporters sometimes catch at quaint expressions that may happen to be dropped at the Bar or Bench; and mistake their meaning.—*Lord Mansfield*, Miller *v.* Race (1758), 1 Burr. Part IV. 457.

   See JUDGES, 70, *and references there given.*

3. Imperfect reports of facts and circumstances, especially in cases where every circumstance weigh something in the scale of justice, are the bane of all science that dependeth upon the precedents and examples of former times.[2]—*Foster*, J., "Crown Law Discourse" (ed. 1762), p. 292.

   See JUDICIAL DECISIONS, 5, 6, 7, 19; PRECEDENTS, 1, 4, 11, 12, *n.*, 13, 15.

Legal Profession.

1. The interests of justice cannot be upholden, the administration of justice cannot go on without the aid of men skilled in jurisprudence, in the practice of the Courts, and in those matters affecting rights and obligations which form the subject of all proceedings.—*Brougham*, L.C., Greenough *v.* Gaskell (1833), 1 Myl. & K. 98.

   See also ATTORNEYS.

2. There is nothing which has so great a tendency to secure the due administration of justice, as having the Courts of the country frequented by gentlemen so eminently qualified by their education and principles of honour, as at this time appear to discharge the

[1] This was in answer to Counsel who had remarked that the reporter in a case he quoted, ought not to have taken notice of a certain *dictum*.

[2] "And now Lord Mansfield delivered the opinion of the Court, having first desired Mr. Hussey to state the case for the sake of the students: for he took this opportunity of observing and declaring that nothing misleads so much as reporting the determination of Courts of justice, without having a sufficient and correct state of the case, which he said was only an *ignis fatuus*, leading people into an error and mistake."—See *Rex* v. *Peters* (1758), 1 Burr. Part IV. 571. Lord Mansfield was always at great pains to "state cases" for the benefit of students. This is frequently seen in the books, the following being another illustration on the point: "There wants nothing to answer the objection, but to state the case: which I will do for the sake of the students."—*Wilson* v. *Mackreth* (1765), 3 Burr. Part IV., p. 1826. *See also* on this subject, *antè*, COUNSEL, 15; *Burnet*, "Hist. of my own Times," alluded to *antè*, JUDGES, 48 *n*, p. 118. On the question of imperfect reports the following will not be considered inappropriate, *per Lord Kenyon*, C.J., in King *v.* Harris (1797), 7 T. R. 239: "That case (R. *v.* Ashton, 8 Mod. 175) is reported in 'Modern Cases in Law and Equity': but it is totally mistaken there, as indeed are nine cases out of ten in that book." To same effect see 1 Burr. 386 (marginal note); 3 Burr. 1326 (marg. n.); and *per Buller*, J., King *v.* Lyme Regis (1779), 1 Doug. 82.

Legal Profession.—*continued.*

duties which they are called upon to fulfil.—*Best*, J., Morris *v.* Hunt (1819), 1 Chit. Rep. 555.

3. Professional advice in *England* is confined to legal advice.—*Jessel*, M.R., Slade *v.* Tucker (1880), L. R. 14 C. D. 827.

See also COUNSEL.

Libel.

1. Everything printed or written, which reflects on the character of another, and is published without lawful justification or excuse, is a libel, whatever the intention may have been.—*Parke*, B., O'Brien *v.* Clement (1846), 15 M. & W. 437.
2. It is not the truth or falsehood that makes a libel, but the temper with which it is published.—*Best*, J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 49.
3. It was the rule of Holt, Chief Justice, to make words actionable whenever they sound to the disreputation of the person of whom they were spoken; and this was also Hale's and Twisden's rule; and I think it a very good rule.[1]—*Fortescue*, J., Button *v.* Heyward (1722), 8 Mod. 24.
4. Libelling against a private man is a moral offence; but when it is against a government, it tends to the destruction of it.[2]—*Holt*, C.J., Rex *v.* Beare (1698), 1 Raym. 418.

See GOVERNMENT.

5. Why are libels against individuals prosecuted? Because they have a tendency to provoke the party to whom they are sent to a breach of the peace.—*Best*, J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 117.
6. His reputation is his property, and, if possible, more valuable than other property.[3]—*Malins*, V.-C., Dixon *v.* Holden (1869), L. R. 7 Eq. 492.

See CRIMINAL JUSTICE, 49.

Liberty of the Press.

1. My opinion of the liberty of the press is, that every man ought to be permitted to instruct his fellow subjects; that every man may fearlessly advance any new doctrines, provided he does so with proper respect to the religion and government of the country; that he may

[1] This is in reference perhaps to Baker *v.* Pearce, 6 Mod. 23.

[2] For the antiquity of this notion, see *Vinnius*, 741, by the law of the twelve tables.

[3] "A good name is better than precious ointment."—*Eccles.* vii., 1.

"He that filches from me my good name,
Robs me of that which not enriches him,
And makes me poor indeed."
—*Shakes.*, "Othello" (Iago), Act III., Sc. iii.

Liberty of the Press—*continued.*

point out errors in the measures of public men; but he must not impute criminal conduct to them.—*Best*, J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 120.

See LIBERTY OF THE SUBJECT, 3; MISTAKES, 1; SOVEREIGNTY, 10; TRUTH, 13.

2. The liberty of the press has always been, and has justly been, a favourite topic with Englishmen. They have looked at it with jealousy whenever it has been invaded; and though a licenser was put over the press, and was suffered to exist for some years after the coming of William, and after the revolution, yet the reluctant spirit of English liberty called for a repeal of that law; and from that time to this it has not been shackled and limited more than it ought to be.—*Lord Kenyon*, Case of John Lambert and others (1793), 22 How. St. Tr. 1016.

3. To be free, is to live under a government by law. The *liberty of the press* consists in printing without any previous licence, subject to the consequences of law. The *licentiousness* of the press is *Pandora's* box, the source of every evil. Miserable is the condition of individuals, dangerous is the condition of the State, if there is no certain law, or, which is the same thing, no certain administration of law, to protect individuals or to guard the State.—*Lord Mansfield*, King *v.* Shipley (1784), 3 Douglas's Rep. 170.

See PRECEDENTS, 20, *and references therefrom;* PROTECTION, 2.

4. Where vituperation begins, the liberty of the press ends.—*Best*, J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 120.

5. The liberty of the press is dear to England; the licentiousness of the press is odious to England: the liberty of it can never be so well protected as by beating down the licentiousness.—*Lord Kenyon*, Cuthell's Case (1799), 27 How. St. Tr. 674.

See COMMERCE, 3.

6. When licentiousness is tolerated, liberty is in the utmost danger; because tyranny, bad as it is, is better than anarchy; and the worst of governments is more tolerable than no government at all.—*Camden*, L.C.J., Case of Seizure of Papers (1765), 19 How. St. Tr. 1074.

See also GOVERNMENT.

7. The law of England is a law of liberty, and, consistently with this liberty, we have not what is called an *imprimatur* (let it be printed); there is no such preliminary licence necessary. But if a man publish a paper, he is exposed to the penal consequences, as he is in every other act, if it be illegal.—*Lord Ellenborough*, R. *v.* Cobbett (1804), 29 How. St. Tr. 49.

See LAW, 47.

Liberty of the Press—*continued.*

8. A man may publish anything which twelve of his countrymen think not blamable.—*Lord Kenyon,* Cuthell's Case (1799), 27 How. St. Tr. 675.

   See JURY, 22.

9. The power of free discussion is the right of every subject of this country. It is a right to the fair exercise of which we are indebted more than to any other that was ever claimed by Englishmen. All the blessings we at present enjoy might be ascribed to it.—*Lord Kenyon,* King *v.* Reeves (1796), Peake's Nisi Prius Cases, 85.

   See FREEDOM OF SPEECH; LAW, 70; MINORITIES, 2; POLITICS, 8; VOTING.

10. The liberty of the press is a very great advantage and security to our public liberty.—*Lord Mansfield,* The King *v.* Williams (1774), Lofft. 763.

11. The liberty of the press is no greater and no less than the liberty of every subject of the Queen.—*Lord Russell of Killowen,* Reg. *v.* Gray (1900), L. R. 2 Q. B. D. 40.

Liberty of the Subject.

1. The Judge is intrusted with the liberties of the people, and his saying is the Law.—*Twisden,* J., King *v.* Wagstaffe (1665), Sir Thos. Ray. Rep. 138.

   See COUNSEL, 8; LAW, 18.

2. I should be as unwilling as any man to concur in anything injurious to the rights of the subject. The *Habeas Corpus* is a very wise and beneficial statute: and the Judges have always been disposed to put such a construction upon it as will favour the real liberty of the subject. But we must be careful that those Acts which have been made for the benefit of the subject are not turned into engines of oppression: nor must we, under the idea of promoting general liberty, withhold that degree of favour from individuals which is consistent with the security of the public.—*Rooke,* J., Huntley *v.* Luscombe (1801), 1 Bos. and Pull. Rep. 538.

   See ADMINISTRATION OF JUSTICE, 35; CONSTRUCTION, 7; PARLIAMENT, 13.

3. The last end that can happen to any man, never comes too soon, if he falls in support of the law and liberty of his country: for liberty is synonymous to law and government.—*Lord Mansfield,* Rex v. Wilkes (1769), 4 Burr. Part IV., p. 2563.

   See LAW, 50; LIBERTY OF THE PRESS, 1; MINORITIES, 2; TORT, 6.

4. Whatever restraint is larger than the necessary protection of the party, can be of no benefit to either, it can only be oppressive; and if

Liberty of the Subject—*continued.*

oppressive, it is, in the eye of the law unreasonable.—*Tindal*, C.J., Horner *v.* Graves (1831), 7 Bing. 743.

See PROCESS, 2; PROTECTION, 1.

5. It does not seem to admit of doubt that the general policy of the law is opposed to all restraints upon liberty of individual action which are injurious to the interests of the State or community.[1]—*Lord Watson*, Nordenfelt *v.* Maxim Nordenfelt, &c. Co. (1894), L. R. App. Ca. [1894], p. 552; also *per Lord Macnaghten*, *id.*, p. 565. See also E. Underwood & Son, Ltd. *v.* Barker, L. R. 1 C. D. [1899], p. 311 *et seq.*

See FREEDOM OF SPEECH; MINORITIES, 2; POLITICS, 8; VOTING.

Limitation.

1. The limitation of suits is founded in public convenience; and attended with so much utility, that Courts of Equity adopt this Statute as a positive rule, and apply it, by parity of reason, to cases not within it.[2] —*Lord Mansfield*, Johnson *v.* Smith (1759), 2 Burr. Part IV., p. 961.

See EQUITY, 33, 34; JUDGES, 47.

2. This very cause between parties who (on both sides) are strangers to the whole transaction, shews the wisdom of some limitation.—*Lord Mansfield*, Johnson *v.* Hargreaves (1760), 2 Burr. Part IV., p. 962.

Literature.

1. A writer's fame will not be the less, that he has bread, without being under the necessity of prostituting his pen to flattery or party, to get it.—*Willes*, J., Millar *v.* Taylor (1768), 4 Burr. Part IV., p. 2335.

[1] In the *Year-book*, 2 Hen. V. pl. 26, there is a maxim in common law founded upon public policy, that it was not good for the realm that men should be prevented from exercising their trades. It was an obligation, with a condition that if a man did not exercise his craft, say of a dyer, within a certain town—that is, where he carried on his business—in six months, then the obligation was to be void; upon which *Hull*, J., being uncommonly angry at such a violation of all law, said according to the book, "Par Dieu! if he were here, to prison he should go, just as if he had committed an offence against the King," because he had dared to restrain the liberty of the subject. See *per Lord St. Leonards*, Brownlow *v.* Egerton (1853), 23 L. J. Rep. (N. S.) 415.

[2] It has often been matter of regret in modern times that, in the construction of the Statute of Limitations, the decisions had not proceeded upon principles better adapted to carry into effect the real objects of the Statute; that instead of being viewed in an unfavourable light as an unjust and discreditable defence, it had not received such support as would have made it what it was intended to be, emphatically a Statute of repose. It is a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt from lapse of time, but to afford security against stale demands after the true state of the transaction may be forgotten, or be incapable of explanation by reason of the death or removal of witnesses.—*Mr. Justice Story*, 1 Peters, Sup. C. Rep. (U. S.) 360.

Literature—*continued.*

2. He who engages in a laborious work (such, for instance, as *Johnson's Dictionary*) which may employ his whole life, will do it with more spirit if, besides his own Glory, he thinks it may be a provision for his family.—*Willes*, J., Millar *v.* Taylor (1768), 4 Burr. Part IV., p. 2335.

See AUTHOR, 2.

Litigation.

1. Englishmen may have been law-abiding, but they have not been unlitigious.—*Brett*, L.J., Martin *v.* Mackonochie (1879), 4 L. R. Q. B. 749.

See LAW, 9, 69.

2. Though every attempt to shorten litigation is entitled to the favour of the Court,[1] yet before we stop a party in a regular course of proceeding, we ought to be certain that we shall not deprive him of that justice which the law authorizes him to seek.—*Lord Eldon*, C.J., Martin *v.* Kennedy (1800), 1 Bos. & Pull. 70.

See CHANCERY, 4; PRACTICE, 10; RIGHTS, 3; TRANSFER OF RIGHT OF ACTION.

3. The law is too tenacious of private peace, to suffer litigations to be negotiable.—*Yates*, J., Millar *v.* Taylor (1769), 4 Burr. Part IV., p. 2385.

See COMPROMISE; CRIMINAL JUSTICE, 39, 40; EVIDENCE, 33; PARDON, 4; TRANSFER OF RIGHT OF ACTION.

4. Proceedings at law are sufficiently expensive.—*Lord Kenyon*, Marriott *v.* Hampton (1797), 2 Esp. 548.

Magic.

There is no magic in parchment or in wax.—*Ashhurst*, J., Master *v.* Miller (1763), 4 T. R. 320.

See WORDS, 1.

Magistrates.

1. It is impossible to overrate the importance of keeping the administration of justice by magistrates clear from all suspicion of unfairness. —*Wills*, J., Queen *v.* Huggins (1895), L. R. 1 Q. B. D. [1895], p. 565.
2. It is necessary for Courts of Justice to hold a strict hand over summary proceedings before magistrates, and I never will agree to relax any

[1] *Expedit reipublicæ ut sit finis litium:* It is for the public good that there be an end of litigation.—*Co. Litt.* 303. *Debet esse finis litium:* There ought to be an end of law suits.—*Jenk. Cent.* 61.

Magistrates—*continued.*

of the rules by which they have been bound. Their jurisdiction is of a limited nature, and they must shew that the party was brought within it.—*Lord Kenyon*, C.J., King *v.* Stone (1800), 1 East, 650.

3. It is perfectly plain that either the Crown or any subject may intervene and inform a superior Court that an inferior Court is exceeding its jurisdiction; and it is the duty of the superior Court, when it is so informed, to confine the inferior Court within the limits of its jurisdiction.[1]—*Sir G. Jessel*, M.R., Jacobs *v.* Brett (1875), L. R. 20 Eq. Ca. 5.

See JURISDICTION, 3.

4. I do not see to what purpose we exercise a superintendency over all inferior jurisdictions, unless it be to inspect their proceedings, and see whether they are regular or not. I have often heard it said that nothing shall be presumed one way or the other in an inferior jurisdiction.—*Pratt*, L.C.J., Rex *v.* Cleg (1722), 1 Stra. 476.

See below, 5; COURTS, 1.

5. We presume a magistrate does right until the contrary appears.—*Laurence*, J., King *v.* Despard (1798), 7 T. R. 744.

See above, 4; ADMINISTRATION OF JUSTICE, 35.

6. It is of infinite importance to the public that the acts of magistrates should not only be substantially good, but also that they should be decorous.—*Lord Kenyon*, C.J., The King *v.* Sainsbury (1791), 4 T. R. 456.

See APPEALS, 3; COURTS, 3.

7. It is the more fit for the Supreme Court to give some certain rule in it that may regulate and guide the judgment of inferior Courts.—*Sir Robert Atkyns*, L.C.B., Trial of Sir Ed. Hales (1686), 11 How. St. Tr. 1213.

Married Woman.

If the policy of the law has withheld from married women certain powers and faculties, the Courts of law must continue to treat them as deprived of those powers and faculties, until the legislature directs those Courts to do otherwise.—*Lord Eldon*, C.J., Beard *v.* Webb (1800), 1 Bos. and Pull. 109.

See EQUITY, 20; HUSBAND AND WIFE, 14.

Master and Servant.

1. The power of arbitrarily dismissing those in one's employ, is a power

[1] Excess of jurisdiction is ground for prohibition.—*Brett*, L.J., Martin *v.* Mackonochie (1879), L. R. 4 Q. B. D. 755.

Master and Servant—*continued.*

exercised in a great degree over a vast number of persons in this country, without their having any redress at law. Put the case of a day labourer or ordinary servant. You may refuse to give him a character, and he has no redress. If you give him a false character, he has the means of redress, but that is of a very different kind. And this is the law of the land.—*Shadwell*, V.-C., Ranger *v.* Great Western Rail. Co. (1838), 2 Jur. (O. S.) 789.

2. The possession of the servant is the possession of the master.—*Hide*, C.J., King *v.* Burgess (1663), Ray. (Sir Thos.) Rep. 85.
3. Apprentices and servants are characters perfectly distinct: the one receives instruction, the other a stipulated price for his labour.—*Lord Kenyon*, C.J., The King *v.* Inhabitants of St. Paul's, Bedford (1797), 6 T. R. 454.

See also SOVEREIGNTY, 11, 12.

Matrimony.

1. Nothing is more natural than to marry.—*Hobart*, C.J., Sheffeild *v.* Ratcliffe (1617), Lord Hobart's Rep. 342.
2. The holy state of matrimony was ordained by Almighty God in Paradise, before the Fall of Man, signifying to us that mystical union which is between Christ and His Church; and so it is the first relation: and when two persons are joined in that holy state, they twain become one flesh[1]; and so it is the nearest relation.—*Hyde*, J., Manby *v.* Scott (1659), 1 Mod. Rep. 125.

See HUSBAND AND WIFE, 1.

3. Marriage in the contemplation of every Christian community is the union of one man and one woman to the exclusion of all others.—*Lush*, L.J., Harvey *v.* Farnie (1880), L. R. 6 Pro. D. 53.
4. Matrimony is a sacrament.[2]—*Abney*, J., Richards *v.* Dovey (1746), Willes' Rep. 623.
5. In the Christian Church marriage was elevated in a later age to the dignity of a sacrament.[3]—*Sir Wm. Scott*, Dalrymple *v.* Dalrymple (1811), 2 Hagg. Con. Rep. 64.

[1] *Gen.* iii., 16.

[2] See also 1 *Gibs.* 431. The words of the canon are "Firmiter inhibemus ne cuiquam pro aliquâ pecuniâ denegetur sepultura, vel baptismus, vel aliquod sacramentum ecclesiasticum, vel etiam matrimonium contrahendum impediatur."

[3] *Sanchez*, lib. 2, disp. 6, s. 2, et lib. 2, disp. 10, s. 2. *Father Paul*, p. 737; *Pallavicini*, lib. 23, ch. 8; *Pothier*, tit. 3, p. 290.—27 qu. 2, c. 10, omne. "At the Reformation, this country disclaimed, amongst other opinions of the *Romish* Church, the doctrine of a sacrament in marriage, though still retaining the idea of its being of divine institution in its general origin; and on that account, as well of the religious forms that were prescribed for its regular celebration, an *holy* estate, *holy matrimony*, but it likewise retained those rules of the Canon Law which had their foundation not in

Matrimony—*continued.*

6. Marriage, in its origin, is a contract of natural law[1]; it may exist between two individuals of different sexes, although no third person existed in the world, as happened in the case of the common ancestors of mankind: It is the parent, not the child of civil society. "*Principium urbis et quasi seminarium reipublicæ.*"[2]—*Sir William Scott*, Dalrymple *v.* Dalrymple (1811), 2 Hagg. Con. Rep. 63.
7. It will appear, no doubt, that at various periods of our history there have been decisions as to the nature and description of the religious solemnities necessary for the completion of a perfect marriage, which cannot be reconciled together; but there will be found no authority to contravene the general position, that at all times, by the common law of *England*, it was essential to the constitution of a full and complete marriage, that there must be some religious solemnity; that both modes of obligation should exist together, the civil and the religious.[3]—*Tindal*, C.J., R. *v.* Millis (1844), 10 Cl. & Fin. 655.

Minorities.

1. Experience tells us that sometimes, when minorities insist on their rights, they ultimately prevail.—*Kekewich*, J., Young *v.* South African, &c. Syndicate (1896), L. R. 2 C. D. [1896], p. 278.
2. It is impossible that bodies of men should always be brought to think alike: there is often a degree of coercion, and the majority is governed by the minority, and *vice versâ*, according to the strength

the sacrament, or in any religious view of the subject, but in the natural and civil contract of marriage."—*Sir Wm. Scott*, Dalrymple *v.* Dalrymple (1811), 2 Hagg. Con. Rep. 67.

[1] A contract executed without any part performance.—*Lord Brougham*, R. *v.* Millis (1844), 16 Cl. & Fin. 719.

Consensus, non concubitis, facit matrimonium.—*Co. Litt.* 33.

Our law considers marriage in the light of a contract, and applies to it with some exceptions, the ordinary principles which apply to other contracts.—*Steph. Com.*, Vol. II. (8th ed.), Bk. 3, c. 2, p. 238.

[2] *Cic.* de Off. 1, 17. See also Hyde *v.* Hyde and Woodmansee, L. R. 1 Pr. & Div. 133; Warrender *v.* Warrender, 2 Cl. & Fin. 531; Turner *v.* Meyers, 1 Hagg. Con. 414.

[3] In a case before Mr. Justice Barnes in July, 1899, involving an examination into the Scotch law of marriage, a subject not foreign to the case quoted above, the case of McAdam *v.* Walker (1 Dow. App. Cas. 148), 14 Rev. Rep. 36, 48, was referred to in the argument. In the report of this case is appended a note of some verses summarising the law governing a Scotch marriage, entitled "The Tourist's Matrimonial Guide through Scotland," composed by an eminent Scotch Judge, the late Lord Neaves. "The metrical form," adds the reporter, "is a post-prandial accident, which does not detract from its soundness in point of law." The verse quoted by Mr. Justice Barnes was the following:—

"If people are drunk or delirious,
The marriage of course would be bad;
Or if they're not sober and serious,
But acting a play or charade.
It's bad if it's only a cover
For cloaking a scandal or sin,
And talking a landlady over,
To let the folks lodge in her inn."

Minorities—*continued.*

of opinions, tempers, prejudices, and even interests.—*Eyre*, C.J., Grindley *v.* Barker (1798), 2 Bos. & Pull. 238.

See also FREEDOM OF SPEECH; JUDGES, 48, *n.*; 49; LAW, 70; LIBERTY OF THE PRESS, 9; LIBERTY OF THE SUBJECT, 5; POLITICS, 1, 7, 8; VOTING.

Miscellaneous.

1. Human affairs are wonderfully like a kaleidoscope, with its combinations of colours constantly changing.—*Kay*, J., Coventry's Case (1890), L. R. 1 C. D. [1891], p. 207.
2. The truth is, we live in an age where men are apt to bring those things in question, of which our ancestors never doubted.[1]—*Powell*, J., Britton *v.* Standish (1704), 6 Mod. 190.

   See below, 40; CASES, 14; TRUTH, 7.
3. Great men ruminating back to the origin of things, lose sight of the present state of the world; and end their enquiries at that point where they should begin our improvements.—*Willes*, J., Millar *v.* Taylor (1768), 4 Burr. Part IV. 2339.

   See POLITICS, 8; TORT, 12.
4. I shall not enter into the crude and uncertain opinions of early times. —*Blackstone*, J., Goodright *v.* Harwood (1773), Lofft. 221.

   See RELIGION, 3.
5. Improvement in learning was no part of the thoughts or attention of our ancestors.—*Yates*, J., Millar *v.* Taylor (1769), 4 Burr. Part IV. 2387.

   See UNIVERSITIES, 2.
6. People must not be wiser than the experience of mankind.—*Bowen*, L.J., Filburn *v.* People's Palace and Aquarium Co. (1890), L. R. 25 Q. B. 261.

   See JUDGES, 66; PROTECTION, 2.
7. I wish as sincerely as any man, that learned men may have all the encouragements, and all the advantages that are consistent with the general right and good of mankind.—*Yates*, J., Millar *v.* Taylor (1769), 4 Burr. Part IV. 2394.

   See 6, *above*; CONTRACT, 16.
8. Those regulations that are adapted to the common race of men are

[1] *Nam genus et proavos, et quæ non fecimus ipsi, vix ea nostra voco:* For those things which were done either by our fathers, or ancestors, and in which we ourselves had no share, we can scarcely call our own.—*Ovid.* "The children of this world are in their generation wiser than the children of light."—*St. Luke* xvi., 8.

Multi multa, nemo omnia novit: Many know many things, no one everything.—*Co.*

Miscellaneous—*continued.*

the best.—*Lord Kenyon*, C.J., King *v.* The College of Physicians (1797), 7 T. R. 288.

9. A duty of imperfect obligation attaches on every one to do what is for the good of society.—*Cotton*, L.J., Waller *v.* Loch (1881), L. R. 7 Q. B. 622.

See FRAUD, 4, *n.*; POOR, 3; PROTECTION, 2; TORT, 16.

10. Every man is bound not wilfully to deceive others or to do any act which may place them in danger.—*Willes*, J., Gautret *v.* Egerton (1867), L. R. 2 C. P. Ca. 375.

See 33, *below;* FRAUD, 10, 19; TITLE, 4; TORT, 16; USURY, 2.

11. A man cannot be allowed to neglect a duty which he has undertaken. —*Lord Langdale*, M.R., Booth *v.* Booth (1838), 1 Beav. 129.

See CONTRACT, 2; EQUITY, 38; FRAUD, 14; TORT, 3; TRUTH, 7.

12. Infection is God's arrow.[1]—*Lord Hale*, 1 Hale, P. C., Vol. I. (ed. 1778), p. 432.

See TORT, 11.

13. *Modus in rebus*—there must be an end of things.[2]—*Lord Kenyon*, Proceedings against the Dean of St. Asaph (1783), 21 How. St. Tr. 875.

[1] Lord Hale doubted whether voluntarily and maliciously infecting a person of the plague, and so causing his death, would be murder. It is hard to see why, but he thought as quoted above. "Now what is the act of God?" asks Lord Mansfield, "I consider it to mean," he says, "something in opposition to the act of man: for everything is the act of God that happens by his permission; everything, by his knowledge."—*Forward* v. *Pittard* (1785), 1 T. R. 33. See also Coggs *v.* Bernard, 2 Ld. Raym. 909; Nugent *v.* Smith, L. R. 1 Com. Pl. Div. 423. "The act of God shall prejudice no man; as, where the law prescribeth means to perfect or settle any right or estate, if by the act of God the means, in some circumstances, become impossible, no party shall receive any damage thereby."—*Co. Lit.* 123; 1 *Rep.* 97. *Actus Dei nemini facit injuriam:* The act of God is so treated by the law as to affect no one injuriously.—2 *Bla. Com.* 122.

[2] The famous Sir William Jones, the most accomplished man of his age, had written a very harmless little tract, illustrating the general principles of government, and recommending parliamentary reform, entitled "A Dialogue between a Gentleman and a Farmer." His brother-in-law, Dr. Shipley, approving of it, recommended it to a society of reformers in Wales, and caused it to be reprinted. Thereupon, the Honourable Mr. Fitzmaurice, brother to the first Marquis of Lansdowne, preferred an indictment against the Dean at the Great Sessions for Denbighshire, for a seditious libel; and in the autumn of 1783 it stood for trial at Wrexham, before Lord Kenyon, then Chief Justice of Chester, and his brother Judge, Mr. Justice Barrington. Erskine attended, and thousands flocked to this dirty Welsh village in the hope of hearing him. There was a general feeling in favour of the defendant, so that his acquittal was anticipated, for not only had the pamphlet been generally read and approved of, but it was well known that the Attorney and Solicitor General, being applied to, had refused on the part of the Government to prosecute the author. At the sitting of the Court, however, a motion was made by the prosecutor's counsel to postpone the trial, on the ground that a paper had been printed and extensively circulated in the neighbourhood, which, without mentioning or alluding to the pending prosecution, argued that in all cases of libel, the jury are judges of the law as well as of the fact, and contained

Miscellaneous—*continued.*

14. "He that is greatest among you, let him be your servant" (Matt. xxiii., 11).—Quoted by *Hobart*, C.J., Pitts *v.* James (1614), Ld. Hob. Rep. 125.

15. Nothing is so easy as to be wise after the event.—Quoted by *Bramwell*, B., Cornman *v.* The Eastern Counties Rail. Co. (1859), 5 Jur. (N. S.), 658.

See 6, *above;* LAW, 17, *n.*; RAILWAY COMPANY, 1.

16. Experience hath shewn, that between the prisons and the graves of princes, the distance is very small.—*Sir M. Foster*, J., Foster's Crown Cas. (1762), Discourse I. c. 1, s. 3.

17. 'Tis like leaping before one come to the stile.[1]—*Hale*, C.J., also *Twisden*, J., Sir R. Bovy's Case (1672), 1 Vent. 217.

18. A man is not born a knave; there must be time to make him so, nor is he presently discovered after he becomes one.—*Lord Holt*, Reg. *v.* Swendsen (1702), 14 How. St. Tr. 596.

See CHARACTER, 5; CRIMINAL JUSTICE, 4, 49; FRAUD, 27; REPUTATION.

19. Nothing is so silly as cunning.—*Lord Mansfield*, Anonymous (1772), Lofft. 54.

See EVIDENCE, 14; FRAUD, 4, *n.*, 19, 27; MISCELLANEOUS, 40; PLEADINGS, 5, 10; TRUTH, 6; USURY, 2.

20. You know very well the old counsel, and it is a good one, "Fear God, and honour the King, and meddle not with them that are given

various extracts from legal writers to establish this position. There was no allegation that this was done by the defendant, and he made an affidavit, positively denying all knowledge of it. Notwithstanding an animated address from Erskine upon the unmeasurableness of the motion and the extreme hardship which delay would cause to his client, the Judges, without hearing the reply, ordered the trial to be postponed; and upon a suggestion by Erskine that a letter of the prosecutor could be proved, showing that he was acting vindictively, the speech quoted above is said to have been made by the presiding Judge. Says Lord Campbell: There were several Latin quotations which this distinguished lawyer had picked up, and which he generally misapplied, insomuch that George III. gave him the friendly advice, "Stick to your *good law*, and leave off your bad *Latin*." He was very acute, very deeply learned in his profession, and a very honest man; but it was rather humiliating that the successor of such an accomplished scholar as Lord Mansfield should hardly have had the rudiments of a classical education.—*Lives of the Ld. Chan.*, Vol. VIII. (4th ed.) 272. With regard to Lord Mansfield and the reference to his accomplishments by Lord Campbell, it may be added that his knowledge of Latin was undoubted; the following quotation on the subject from one of his judgments shews it: "The Latin is somewhat worse, I think, in this Charter, than in that of *Edward* the Third: Worse, indeed, I think never existed. The more a man understands Latin the less he will be able to understand this."—*Lord Mansfield*, Mayor, &c. of Berwick-upon-Tweed *v.* Johnson (1773), Lofft. 338.

[1] "For he that leaps, before he look,
good son,
May leap in the mire, and miss what
he hath done."
—*The Marriage of True Wit and Science* (Wit), Act IV. Sc. i.
"And look before you ere you leap."—*Butler*, "Hudibras," Pt. II., Canto 2, l. 501.

Miscellaneous—*continued.*

to change."[1] Meddling with them that are given to change has brought too much mischief already to this nation; and if you will commit the same sin, you must receive the same punishment: for happy is he that by other men's harms take heed.—*Sir Robert Forster*, C.J., Trial of Thomas Tonge and others (1662), 6 How. St. Tr. 265.

See also JUDGES, 26; RELIGION, 4.

21. No doubt there are plenty of people in this world whom it is difficult to drive, but whom anybody can lead. It is well known that people who are generally most difficult to drive, are usually the most easily to be led by others who understand them.—*Lord Hatherley*, L.C., Turner *v.* Collins (1871), L. R. 7 Ch. Ap. Ca. 340.

See 30, *below;* PARENT AND CHILD, 4; PROTECTION, 2; PUNISHMENT, 10, *n.*

22. There are no means at my disposal for cutting this Gordian knot.[2]—*Chitty*, J., Cunnack *v.* Edwards (1895), L. R. 1 C. D. [1895], p. 498.

See CHANCERY, 8; WILL, 18, *n.*

23. We must take the thing in the grip of our hands.[3]—*Bowen*, L.J., The Queen *v.* Justices of County of London, &c. (1893), L. R. 2 Q. B. 494.

See DELAY, 1; JUDGES, 44, 72, 73.

24. Metaphysical reasoning is too subtile.—*Willes*, J., Millar *v.* Taylor (1768), 4 Burr. Part IV. 2334.

See EVIDENCE, 27; JUDGES, 46; REASONABLE, 3; TORT, 12.

25. If bitter waters are flowing, it is not necessary to inquire from what source they spring.—*Sir Wm. Scott*, Holden *v.* Holden (1810), 2 Hagg. Con. Rep. 458.

See HUSBAND AND WIFE, 1.

26. You must have a very good opinion of the ladies, Mr. Attorney; for

"In amore hace omnia insunt vitia, injuriæ,
Suspiciones, inimicitiæ, induciæ,
Bellum, pax rursum."[4]

Hardwicke, L.C., Moore *v.* Moore (1737), West, Ch. R. 44.

[1] "Fear thou the Lord and the King: and meddle not with them that are given to change."—*Prov.* xxiv., 21.

[2] "O Time, thou must untangle this, not I;
It is too hard a knot for me t' untie."
—*Shaks.*

[3] The point lies in a nutshell.—*Lord Mansfield*, Bulbrook *v.* Goodere (1765), 3 Burr. Pt. IV. 1770. See also *per Lord Macnaghten* on the subject of the rule in Shelley's Case (1 Rep. 104a.), wherein his lordship expresses himself in almost the same terms as above: "That was putting the case in a nutshell. But it is one thing to put a case like Shelley's in a nutshell and another thing to keep it there." See Van Grutten *v.* Foxwell (1897), 66 L. J. Rep. (N. S.) Q. B. D. 752.

[4] This was a suit for an injunction to restrain proceedings in an action of ejectment upon the ground that Lady Moore,

Miscellaneous—*continued.*

27. It was a wise saying, that the farthest way about was often the nearest way home.[1]—Quoted by *Lord Redesdale*, Corporation of Ludlow *v.* Greenhouse (1827), 1 Bligh, New Rep. 49.

28. The only case in which I can conceive a person having breakfast over night is that he is not likely to have it next morning.—*Bowen*, L.J., Borthwick *v. The Evening Post*, Ltd. (1888), 58 L. T. Rep. (N. S.) 258.

29. "*Qui s'excuse s'accuse.*"—Quoted by *Wood*, V.-C., Tichborne *v.* Tichborne (1867), 15 W. R. 1074; by *Lord Bramwell*, Derry *v.* Peek (1889), L. R. 14 Ap. Ca. 347.

30. *'Tis more than reason that goes to persuasion.*[2]—Quoted by *Twisden*, J., Manby *v.* Scott (1672), 1 Levinz. 4; 2 Sm. L. C. (8th Ed.) 462.

See 21, *above.*

31. An active imagination may find a bad tendency arising out of every transaction between imperfect morals.—*Alderson*, B., Brownlow *v.* Egerton (1854), 23 L. J. Rep. Part 5 (N. S.) Ch. 365.

See FRAUD, 3, 8; MOTIVES, 8; PUBLIC POLICY, 7.

32. "*Tout exemple cloche.*"[3]—Quoted by *Knight Bruce*, L.J., Boyse *v.* Rossborough (1854), 23 L. J. Rep. Part 5 (N. S.), Ch. 332.

33. It is every man's own fault if he does not take such advice as will be sure to lead him right.—*Ashhurst*, J., Goodtitle *v.* Otway (1797), 7 T. R. 420.

See 10, *above;* FRAUD, 31; PLEADINGS, 5; PROPERTY, 12; PROTECTION, 2; RELIEF, 1; SOLICITOR AND CLIENT, 2; TITLE, 4.

34. Zeal and indignation are fervent passions.—*Hobart*, C.J., Sheffeild *v.* Ratcliffe (1614), Lord Hobart's Rep. 335.

35. Masterly inactivity may be prudence to one man, desperate rashness to another.—*Kekewich*, J., *In re* Liverpool Household Stores Assoc. (1890), 59 L. J. Rep. C. D. 618.

See COMMERCE, 30; MOTIVES, 11.

the defendant, by her elopement, had forfeited her title to an annuity and that her husband was willing to receive her again. After decree had been pronounced, the Attorney-General for plaintiff said this was so uncommon a case that probably it would not happen again, which called forth the above reply from the Lord Chancellor.

[1] "The next way home's the farthest way about."—*Quarles*, "Emblems," Bk. IV., Pt. II., Ep. 2.

"The furthest way about, t' o'ercome,
In the end does prove the nearest home."
—*Butler*, "Hudibras," Pt. II. Canto I, l. 227.

Sæpe viatorem nova, non vetus, orbita fallit: A new road, not an old one, often deceives the traveller.—4 *Inst.* 34.

[2] "*Twisden*, J., said, that he was now strongly impressed with the truth of the opinion, stated by a reverend divine (hard as the saying may appear)."—*Id.*

[3] *Nullum simile quatuor pedibus currit.* —*Co.*

Miscellaneous—*continued.*

36. A wager![1]—*Eyre*, L.C.J., Tooke's Case (1794), 25 How. St. Tr. 418.
See GAMBLING.

37. "As the crow flies"—a popular and picturesque expression to denote a straight line.—*Maule*, J., Stokes *v.* Grissell (1854), 23 L. J. Rep. Part 7 (N. S.), Com. Pl. 144.
See DELAY, 2, *n.*

38. *Comparative necessairement suppose un positive, et que riens est un mere privative:* A comparative necessarily supposes a positive, and nothing is a meer privative.—*Vaughan*, J., Tustian *v.* Roper (1670), Jones's (Sir Thos.) Rep. 37.

39. "Touch not a cat, but (without) a glove."[2]—Quoted by *Lord Brougham*, Abbott *v.* Middleton (1858), 7 H. of L. Ca. 76.

40. What is clear to one man may be doubtful to another.—*Lord Kenyon*, Godfrey *v.* Hudson (1788), 2 Esp. 500.
See above, 2, 19; *below*, 44; CASES, 14; MOTIVES, 10; POLITICS, 8; REPUTATION; TITLE, 4; WORDS, 7.

41. He who sows ought to reap.[3]—*Lord Mansfield*, Wigglesworth *v.* Dallison (1779), Doug. 201.
See INTOXICATION, 2; TORT, 5.

42. Thou shalt not feethe a kid in his mother's milk.[4]—Quoted by *Lord Mansfield*, Archbishop of Canterbury *v.* House (1774), Lofft. 622.

43. It is sometimes difficult to get rid of first impressions.—*Lord Kenyon*, C.J., Withnell *v.* Gartham (1795), 6 T. R. 396.
See MOTIVES, 9.

44. What may be good circumstances in one man, cannot be deemed so in another.—*Lord Ellenborough*, Rex *v.* Locker (1803), 5 Esp. 106.
See above, 40; REPUTATION.

[1] Prisoner stated to the Court he "would venture a wager" that a witness in the case had made a statement which he could not on his oath deny, which drew forth the above exclamation from the Judge, to which prisoner replied, "I am wrong. I forgot myself."

[2] This motto of the *Macphersons* was quoted by Lord Brougham in an argument upon the construction to be put upon the word "but"; that the word is not necessarily in opposition to what precedes it. It is a conjunction as well as a preposition. In one case it is derived from "be out," and is equivalent to "except," or "*without*," as in the case above pointed out by Lord Brougham.

[3] "For as you sow, y' are like to reap."—*Samuel Butler*, "Hudibras," Part. II., Canto 2.

"He which soweth sparingly shall reap also sparingly; and he which soweth bountifully shall reap also bountifully."—2 *Corinthians* ix., 7.

"Whatsoever a man soweth, that shall he also reap."—*Galatians* vi., 7.

[4] Mr. Waller, in his defence before the House of Commons, thus explained this precept of the Bible: "You shall not turn what was designed to support and benefit mankind into their destruction."*—*Id.* 622.

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* *Leges in bonum & salutem hominum nata pessimum est in fraudem et perniciem hominum converti.*

Miscellaneous—*continued.*

45. The tree must lie where it has fallen.[1]—*North*, J., *In re* Bridgewater Navigation Co., Ltd. (1890), 60 L. J. Rep. (N. S.) C. D. 422.

46. Let no cobler go beyond his last.—Quoted by *Bayley*, J., Trial of Hunt and others (1820), 1 St. Tr. (N. S.) 282.[2]

47. A man who has done one contemptible thing to benefit himself will do another, if necessary, in order to carry out and complete the object he has in view.[3]—*Lord Esher*, M.R., Exchange Telegraph Company *v.* Gregory & Co., (1896) L. R. 1 Q. B. D. [1896], p. 151.

See FRAUD, 4, *n.*; REPUTATION; USURY, 2.

48. It certainly is of consequence to prevent men hanging out false colours.—*Laurence*, J., Jordaine *v.* Lashbrooke (1798), 7 T. R. 611.

See below 58; PLEADINGS, 6.

49. When thieves fall out, honest men get their own.—*Sir M. Hale.*[4]

50. They that once begin first to trouble the water, seldom catch the fish.—*Jefferies*, L.C.J., Trial of Wm. Sacheverell and others (1684), 10 How. St. Tr. 92.

51. No dog is entitled to have one worry with impunity.—*Lord Cockburn*, Orr *v.* Fleming (1853), 1 W.R. 339.

52. This was *laying the axe to the root of the tree.*[5]—Quoted by *Parker*, C.J., Reg. *v.* Ballivos, &c. de Bewdley (1712), 1 P.Wms. 226.

53. Human nature is imperfect.—*Alderson*, B., Howard *v.* Gosset (1844), 6 St. Tr. (N. S.) 365.

See ADMINISTRATION OF JUSTICE, 35; DISCRETION, 9; HUSBAND AND WIFE, 5; JUDGES, 76; LAW, 35; MISTAKES, 2; PRESUMPTION, 8; REASONABLE, 3.

54. The best men are but men, and are sometimes transported with passion.—*Sir Robert Atkyns*, L.C.B., Trial of Sir Edw. Hales (1686), 11 How. St. Tr. 1206.

See CRIMINAL JUSTICE, 23; MOTIVES, 11; POLITICS, 8; SOVEREIGNITY, 10; TRUTH, 13.

[1] "In the place where the tree falleth, there it shall be."—*Ecclesiastes* xi., 3.

[2] "Let the cobler stick to his last."—*Pliny.*

[3] *Res profectò stulta est nequitiæ modus:* There is no mean in wickedness. —11 *Co.* 8 b.

Ei nihil turpe, cui nihil satis: To whom nothing is sufficient, to him nothing is base.—4 *Inst.* 53.

Quæ mala sunt inchoata in principio vix bono peraguntur exitu: Things bad in principle at the commencement seldom achieve a good end.—4 *Co.* 2. "Bien mal acquis ne prospère jamais."—*Fr. Prov.*

[4] In a case before Sir Matthew Hale, the two litigants unwittingly set out that at a former period they had in conjunction leased a ferry to the injury of the proprietor, on which Sir M. Hale made the above remark. This will be found recorded in "Familiar Words," p. 277. Another similar saying is, "When thieves fall out, true men come to their goods."—*Proverbs* (J. Heywood), Bk. II., Ch. ix.

[5] Said on an argument respecting the payment of costs to the Crown. See Matt. iii., 10; Luke iii., 9.

Miscellaneous—*continued.*

55. The lecturer should remember that

"Beneath this starry arch
Nought resteth or is still;"

and that his duty is to watch over and criticise new modes of thought, new works, the march of intellect, and those discoveries which

"Make old knowledge
Pale before the new."

Even in pure mathematics there may be alterations and additions, and ethical science is not free from the inexorable law of mutability.—*Lord Fitzgerald,* Caird *v.* Sime (1887), 57 L. J. Rep. P. C. Cas. 13; L. R. 12 App. Cas. 354.

See AUTHOR, 1.

56. The *end* directs and sanctifies the *means.*[1]—*Wilmot,* L.J.C., Collins *v.* Blantern (1767), 2 Wils. Rep. 351.

See CRIMINAL JUSTICE, 43; JURY, 30; NECESSITY, 2.

57. "As sure as God is in Gloucester!"—Exclamation by *Lord Alvanley,* L.C.[2]

[1] "The end must justify the means."—*Matthew Prior,* "Hans Carvel," line 67.

FALLACY THAT "THE END JUSTIFIES THE MEANS." "The end justifies the means. Yes: but on three conditions, any of which failing, no such justification has place:—

1. One is, that the end be good.
2. That the means chosen be either purely good—or, if evil, having less evil in them than on a balance there is of real good in the end.
3. That they have more of good in them, or less of evil as the case may be, than any others, by the employment of which the end might have been attained.

Laying out of the case these restrictions, note the absurdities that would follow.

Acquisition of a penny loaf is the end I aim at. The goodness of it is indisputable. If, by the goodness of the end, any means employed in the attainment of it are justified, instead of a penny, I may give a pound for it: thus stands the justification on the ground of prudence. Or, instead of giving a penny for it, I may cut the baker's throat, and thus get it for nothing: and thus stands the justification on the ground of benevolence and beneficence, II. 470." —*Benthamiana; or, Select Extracts from the Works of Jeremy Bentham,* 1843, p. 419.

[2] Swift, in one of his verses upon Whiston writes:

"Who prov'd, as sure as God's in Gloucester,
That Moses was a great impostor."

It is said of Lord Alvanley that he would now and then talk in a slip-shod manner, as if sitting in an arm-chair and presiding over a free-and-easy club. Of this deportment a singular instance was mentioned by the late Mr. Whitbread, when arraigning Lord Melville at the bar of the House of Lords (see *Trial of Lord Viscount Melville* (1806), 29 How. St. Tr. 550).

"It was not long since Lord Alvanley was trying a cause in this hall, and an Act of Parliament was in question. A learned serjeant quoted a particular section of the Act; Lord Alvanley said there was no such clause in the Act.

"'Why but, my lord, here it is,' said the serjeant;

"'Never mind, I tell you I know it is not there,' retorted the Judge.

"'I beg your lordship's pardon, but here it is in the book; read it.'

"The learned Judge at length took the book, and having read it, exclaimed—

"'Oh true, here it is sure enough, as sure as God is in Gloucester.'"

—*Townsend,* "Lives of Twelve Eminent Judges," Vol. I., p. 158. This incident

Miscellaneous—*continued.*

58. Wickedness and weakness generally go hand-in-hand together; and upon the repeated observation of their doing so, is founded that well-known saying, "*Quos Deus vult perdere prius dementat.*"—*Mounteney* B., Annesley *v.* Lord Anglesea (1743), 17 How. St. Tr. 1431.

See above, 48; EVIL, 1; FRAUD, 4, *n.*; WORDS, 8.

59. "You may not sell the cow and sup the milk."[1]—*Pr.* Quoted by *Lord Macnaghten*, Nordenfelt *v.* Maxim Nordenfelt Guns and Ammunition Co., (1894), L. R. App. Cas. [1894], p. 572.

60. "How happy could I be with either
Were t'other dear charmer away;
But now you both tease me together,
To neither a word will I say."

Gay, "The Beggar's Opera" (*Macheath sings*), Act II., sc. ii.

—Quoted by *Vaughan Williams*, L.J., (in reference to the meaning of the word "either"), *In re* Pickworth; Snaith *v.* Parkinson (1899), L.R. 1 C. D. C. A. 655.

61. *Aut Cæsar aut nullus.*[2]—Quoted by *Lord Macnaghten* in Van Grutten *v.* Foxwell (1897), 66 L. J. Rep. (N. S.) Q. B. D. 752.

Mischief.

1. Certainty is the mother of quiet, which is the end of the law, and tho' it falls out that some particular cases may light very hard,

in reference to Lord Alvanley brings to recollection a somewhat similar anecdote related by Mr. Baron Huddlestone some few years back, and to be found recorded in the following paragraph:—

An Anonymous Case.—Mr. Finlay, Q.C., in arguing some matters of law, referred to a case which, he said, had been decided lately, but had not been reported; so that he could not quote it in the usual way. Mr. Baron Huddlestone said that he recalled to his mind that years ago Mr. Wakefield, in one of the Chancery Courts, referred to what he described as an anonymous case; and the matter for the time passed off. When Mr. Bethell, however, came to reply, he said, "I have to inform your lordship that that case has been overruled in the House of Lords." Thereupon Mr. Wakefield, somewhat losing his temper, retorted, "There never was such a case." In a similar way the case now adverted to might, perhaps, be called "An anonymous case," and Mr. Reid might answer it by saying, "It has been overruled in the House of Lords."—*The* [LONDON] *Standard*, 4th July, 1885; *Cases Heard and Determined in the Supreme Court of the Straits Settlements*, by the Author, Vol. I. cviii. *See also, antè*, LAW, 64.

[1] Said in reference to a solicitor in large practice who sold his business covenanting not to practise on his own account in England or Scotland, but who afterwards set up in the immediate neighbourhood and thus tried to steal the business he had sold. A similar proverb to the above may be found in the following: "Would yee both eat your cake and have your cake?"—See *Proverbs* (Heywood), Bk. II., Ch. ix.

[2] "Either Cæsar or nobody:" I will attain supreme eminence, or perish in the attempt.—*A saying of Julius Cæsar.*

Mischief—*continued.*

yet better that mischief than an inconvenience.[1]—*Pollexfen*, C.J., Bolton *v.* Canham (1672), Pollexfen's Rep. 131.

See below, 2; ADMINISTRATION OF JUSTICE, 35; COMMON LAW, 5; DOCTRINE, 4; LAW, 43, 44; PRECEDENTS, 20.

2. The policy of the law of *England*, and indeed the true principles of all government, will rather suffer many private inconveniences, than introduce one public mischief.—*Wright*, J., Sir John Wedderburn's Case (1746), Foster's Cr. Cas. 29.

See above, 1; JUSTICE, 1; NAVY, 7; TORT, 3.

3. It is a general rule of Judgment, that a mischief should rather be admitted than an inconvenience.[2]—*Cowper*, L.C., Devit *v.* College of Dublin (1720), Gilbert Eq. Ca. 249.

Mistakes.

1. There have been errors in the administration of the most enlightened men.—*Lord Ellenborough*, Rex *v.* Lambert and Perry (1810), 2 Camp. 405.

See EVIL, 1; JUDGES, 17; LIBERTY OF THE PRESS, 1; PRECEDENTS, 6, *n.*; SOVEREIGNTY, 10; TORT, 25.

2. Mistakes are the inevitable lot of mankind.—*Jessel*, M.R., *In re* Taylor's Estate; Tomlin *v.* Underhay (1882), L. R. 22 C. D. (1883), p. 503.

See AMENDMENT, 15; CRIMINAL JUSTICE, 29; MISCELLANEOUS, 53.

3. A mistake, as it seems to me, is none the less a mistake because it is made deliberately in the pursuance of a mistaken intention.—*Lord Russell of Killowen*, C.J., Linforth *v.* Butler (1898), L. R. 1 Q. B. D. 120.

See HONESTY, 1; IRREGULARITY.

4. I know but of one Being to whom error may not be imputed.—*Lord Ellenborough*, Rex *v.* Lambert and Perry (1810), 2 Camp. 402.

See SOVEREIGNTY, 10.

[1] "Certainty is the mother of repose, and therefore the common law aims at certainty." — *Lord Hardwicke*, L.C., Walton *v.* Tryon (1753), 1 Dick. 245.

"And the law says, better is a mischief than an inconvenience. By a mischief is meant, when one man or some few men suffer by the hardship of a law, which law is yet useful for the public. But an inconvenience is to have a public law disobeyed or broken, or an offence to go unpunished."—*Sir Robert Atkyns*, L.C.B., Trial of Sir Edw. Hales (1686), 11 How. St. Tr. 1208. *See also antè*, JUDGES, 13, *and references there given.*

[2] As the sun arising in the horizon shews not the figure so clear, as when it is beholden in the meridian; so by mixing many impertinences with the case in judgment, it hath been apprehended to be of a far tenderer consequence than indeed it is: yet tender and weighty it is.—*Finch*, L.C.J., Hampden's Case (1637), 3 How. St. Tr. 1217.

Money.

1. One cannot help regretting that where money is concerned, it is so much the rule to overlook moral obligations.—*Malins*, V.-C., Ellis *v.* Houston (1878), L. R. 10 C. D. 240.

   See CRIMINAL JUSTICE, 41; PARDON, 4.

2. The greediness of gain is the only principle on which a stranger can be induced to furnish a stranger.[1]—*Burnett*, J., Earl of Chesterfield *v.* Janssen (1750), 2 Ves. 125.

   See COMMERCE, 12, 18; FRAUD, 29; PROPERTY, 12.

3. Common people do not make such distinction between money and land, as persons conversant in Law Matters do.[2]—*Lord Mansfield*, Hope *v.* Taylor (1756), 1 Burr. Part IV. 272.

   See FRAUD, 20.

4. It has been quaintly said "that the reason why money cannot be followed is, because it has no ear-mark": But this is not true. The true reason is, upon account of the currency of it: it cannot be recovered after it has passed in currency.—*Lord Mansfield*, Miller *v.* Race (1785), 1 Burr. Part IV. 457.

5. I am a great friend to the action for money had and received: it is a very beneficial action, and founded on principles of eternal justice.—*Lord Mansfield*, C.J., Towers *v.* Barrett (1786), 1 T. R. 134.

6. Any man who spends his income, whether large or small, benefits the community by putting money in circulation.—*Kekewich*, J., *In re* Nottage (1895), L. R. 2 C. D. [1895], p. 653.

Morals.

1. Whatever is contrary, *bonos mores est decorum*, the principles of our law prohibit, and the King's Court, as the general censor and guardian of the public manners, is bound to restrain and punish.—*Lord Mansfield*, Jones *v.* Randall (1774), Lofft. 386.

   See also CONTEMPT OF COURT, 1; LAW, 61; RELIEF, 2.

2. The reason why no mention is made in our ancient books of uses, is, because men were then of better Consciences than now they are, so as the feoffees did not give occasion to their feoffors to bring subpœnas to compell them to perform the trusts reposed in them.—*Manwood*, J., Brett's Case (1583), 2 Leonard's Rep. 15.

[1] "We, as lawyers, as men of business, as men of experience, know perfectly well what evils necessarily result from handing over a great family estate to a mortgagee in possession, whose only chance of getting his money is to sacrifice the interests of everybody to money-getting." —*Lindley*, L.J., *In re* Marquis of Ailesbury's Settled Estates (1891), L. J. Rep. 61 C. D. 123.

[2] "Common people" may here be taken in the same sense as "ignorant country fellows" in JURY, 10, *supra*.

Morals—*continued.*

3. This Court does not sit as a Court of morality, to inflict punishment against those who offend against the social law.—*Sir F. H. Jeune*, Evans *v.* Evans (1899), L. R. Prob. Div. [1899], p. 202.

See COURTS, 11; FRAUD, 20, *n.*; JUDICIAL PROCEEDINGS, 7; PUBLIC POLICY, 7.

Motives.

1. Motives do not concern me; they are a dangerous subject with which to deal.—*Kekewich*, J., Whelan *v.* Palmer (1888), L. J. Rep. (N. S.) 57 C. D. 788.

See FRAUD, 2.

2. What passes in the mind of man is not scrutable by any human tribunal[1]; it is only to be collected from his acts.—*Willes*, J., King *v.* Shipley (1784), 3 Doug. 177.

See WORDS, 8.

3. We must judge of a man's motives from his overt acts.—*Lord Kenyon*, C.J., King *v.* Waddington (1800), 1 East, 158.

4. There is no entering into the secret thoughts of a man's heart.—*Lord Mansfield*, The King *v.* Woodfall (1774), Lofft. 782.

5. It is impossible to dive into the secret recesses of a man's heart.[2]—*Sir Wm. Grant*, M.R., Burrowes *v.* Lock (1805), 10 Ves. Jr. 476.

6. To enter into the hearts of men belongs to him who can explore the human heart.—*Lord Kenyon*, C.J., Eaton's Case (1793), 22 How. St. Tr. 821.

7. It is not for human judgment to dive into the heart of man, to know whether his intentions are good or evil.—*Lord Kenyon*, C.J., Case of Lambert and others (1793), 22 How. St. Tr. 1018.

See SOVEREIGNTY, 10; TRUTH, 13.

8. . . . The fallacious use of the principle that you cannot look into a man's mind. It is said you cannot do that: therefore what follows? It is said that you are to have fixed rules to tell you that he must have meant something, one way or the other, when certain exterior phenomena arise. The answer is that there is no such thing as an absolute criterion which gives you certain index to a man's mind. There is nothing outside his mind which is an absolute indication of

[1] "He revealeth the deep and secret things, he knoweth what is in the darkness, and the light dwelleth with him."—Quoted by *Legge*, B., Trial of Mary Blandy (1752), 18 How. St. Tr. 1188.

[2] See also *per* Lord Romilly, M.R., in *Re* Ward (1862): "The plaintiff cannot dive into the secret recesses of his (the defendant's) heart."—31 *Beav.* 7.

Motives—*continued.*

what is going on inside. So far from saying that you cannot look into a man's mind, you must look into it, if you are going to find fraud against him: and unless you think you see what must have been in his mind, you cannot find him guilty of fraud.—*Bowen*, L.J., Angus *v.* Clifford (1891), L. R. 2 C. D. [1891], p. 471.

See FRAUD, 2, 8, 34; MISCELLANEOUS, 31.

9. Every man has a right to keep his own sentiments if he pleases.—*Yates*, J., Millar *v.* Taylor (1769), 4 Burr. Part IV. 2379.

See AUTHOR, 1; JUDGES, 48, *n.*; MISCELLANEOUS, 43.

10. Men's feelings are as different as their faces.—*Grose*, J., Good *v.* Elliott (1790), 3 T. R. 701.

See MISCELLANEOUS, 40; WORDS, 7.

11. A man acting for himself may indulge his own caprices, and consider what is convenient or agreeable to himself, as well as what is strictly prudent, and his prudential motives cannot afterwards be separated from the others which may have governed him.—*Lord Langdale*, M.R., Att.-Gen. *v.* Kerr (1840), 2 Beav. 428.

See COMMERCE, 30; FRAUD, 2; JURY, 11; MISCELLANEOUS, 35, 54.

12. Motives are very often immaterial with reference to the manner of disposing of a suit. It has been said by an eminent Judge, that if you were to look into motives of suitors, Courts of justice would not sit above a month in the year, and would have little to do. Of course there are, in numerous instances, motives for litigation which, if they could be looked into, would prevent a Court of justice from interfering. But generally I agree that it is not the rule so to regard them. —*Knight Bruce*, L.J., Att.-Gen. *v.* Sheffield Gas Consumers Co. (1853), 3 D. M. & G. 311.

See ADMINISTRATION OF JUSTICE, 9, 15; PLEADINGS, 4; TORT, 2.

13. The rule of our law is that the immediate cause, the *causa proxima*, and not the remote cause, is to be looked at: for, as Lord Bacon says: "It were infinite for the law to judge the causes of causes and their impulsions one of another; therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree."[1]—*Blackburn*, J., Sneesby *v.* Lancashire and Yorkshire Rail. Co. (1874), L. R. 9 Q. B. Ca. 267.

See ADMINISTRATION OF JUSTICE, 7; FRAUD, 19; LAW, 41.

[1] *Causa proxima, non remota spectatur.* —*Bac. Max. Reg.* 1. This is why in the awarding of damage, only the proximate loss which can be directly traced to the injury is considered. If consequently losses were included there would be nowhere to stop and they might result from other causes. For illustration, see Sharp *v.* Powell, 7 C. P. 253; Cattle *v.* Stockton Waterworks Co., 10 Q. B. 453.

Motives—*continued.*

14. I think the motives of the legislature in passing an Act of Parliament are to be taken to be proper motives.—*Bayley*, J., King *v.* Hunt (1820), 1 St. Tr. (N. S.) 312.

See PARLIAMENT, 8, 13, 17.

15. It was by no means uncommon, where the legislature had a particular object in view in making a particular statute, to extend the enactments beyond the immediate and original object, and apply it to other matter suggested by it.—*Abbott*, C.J., Clarke *v.* Burdett and another (1819), 2 Stark. 505.

See CONSTRUCTION, 8, 9, 10; STATUTES, 7.

Name.

Where a man calls himself by a name which is not his name, he is telling a falsehood.[1]—*Lord Esher*, M.R., Reddaway *v.* Banham (1895), L. R. 2 Q. B. D. [1895], p. 293.

Naturalization.

What does naturalization give? All that belongs to the character of a British Subject. What does it take away? All that does not appertain to that character. It makes the party *ipso facto* a British Subject, to all intents and purposes.—*Wilde*, C.J., Reg. *v.* Manning (1849), 4 Cox, C. C. 37.

Navy.

1. The legislature have anxiously provided for those most useful and deserving body of men, the seamen and marines of this country.—*Lord Kenyon*, C.J., Turtle *v.* Hartwell (1795), 6 T. R. 429.
2. Surely the navy must be the navy royal.[2]—*Holt*, C.J., Tutchin's Case (1704), 14 How. St. Tr. 1122.
3. The royal navy of England has ever been its greatest defence and

[1] *Nihil facit error nominis cum de corpore constat:* An error as to a name is nothing when there is certainty as to the person.—11 *Co.* 21. See also Janes *v.* Whitbread and others (1851), 11 C. B. 406, 411. Nothing is more certain than that given *bona fides*, a man may call himself what he pleases. "Any one," said Sir Joseph Jekyll, M.R., in 1730, "may take upon him what surname, and as many surnames as he pleases without an Act of Parliament."—*Barlow* v. *Bateman*, 3 P. Wms. 65. But where a fraud is practised by means of the change of name, it is, of course, otherwise.—*Frankland* v. *Nicholson* (1805), 3 M. & S. 260. The statement of the law in Barlow *v.* Bateman might be understood to mean that a man might only change his name definitely, and not use two at once, but given *bona fides* as above laid down a man may use two names at once, as for instance one for his private and one for his business use.

[2] This was on an argument that the word "navy" "signified no more than a number of ships got together, and therefore there may be a navy of merchant ships as well as a navy of men-of-war."

Navy—*continued.*

ornament; it is its ancient and natural strength; the floating bulwark of the island.[1]—*Sir Wm. Blackstone* (1765), Com. Bk. I., ch. xiii., 387.

4. The condition of the British Navy is, no doubt, a matter of national importance and public interest.—*Grove*, J., Henwood *v.* Harrison (1872), L. R. 7 C. P. Cas. 613.

5. The salvation of this country depends upon the discipline of the fleet; without discipline they would be a rabble, dangerous only to their friends, and harmless to the enemy.—*Per Cur.*,[2] Johnstone *v.* Sutton (1786), 1 T. R. 549.

6. The navy is the most important defence of the country, in which every subject of the Queen has an interest of the deepest character.—*Willes*, J., Henwood *v.* Harrison (1872), L. R. 7 C. P. Cas. 627.

7. War itself is a great evil, but it is chosen to avoid a greater. The practice of pressing is one of the mischiefs war bringeth with it. But it is a maxim in law, and good policy too, that all private mischiefs must be borne with patience for preventing a national calamity. And as no greater calamity can befall us than to be weak and defenceless at sea in a time of war, so I do not know that the wisdom of the nation hath hitherto found out any method of manning our navy, less inconvenient than pressing; and at the same time, equally sure and effectual.[3]—*Foster*, J., Case of Pressing Mariners (1743), 18 How. St. Tr. 1330.

See MISCHIEF, 2; SHIPPING, 7.

8. It may not be fit, in point of discipline, that a subordinate officer should dispute the commands of his superior, if he were ordered to go to the mast head: but if the superior were to order him thither, knowing that, for some bodily infirmity, it was impossible he should execute the order, and that he must infallibly break his neck in the attempt, and it were so to happen, the discipline of the navy would not protect that superior from being guilty of the crime of murder.—*Eyre*, B., Sutton *v.* Johnstone (1786), 1 T. R. 503.

[1] The naval dominion of England is of great consequence and use; for it is called *dotem regni*. If therefore the kingdom of England consists of land and sea, I hope we shall not stand at half defence, to defend the land and leave the sea.—*Rot. Parl.*, 2 Rich. II., M. 25.

Lords Loughborough and *Mansfield*.

[2] The maxims on this head are "Salus populi suprema lex." (*Bac. Max. Reg.* 12), and "Privatum incommodum publico bono pensatur." Pressing is still legal, though nowadays it is unnecessary to resort to it, as the principle is unchanged that the Sovereign can call upon all his subjects for their services in the event of necessity. These maxims still find illustration in the compulsory taking of land for railways and other public undertakings, service of jurymen, incidence of taxation, &c.

Necessity.

1. The law of necessity dispenses with things which otherwise are not lawful to be done.—*Per Cur.*,[1] Manby *v.* Scott (1672), 1 Levinz, 4; 2 Sm. L. C. (8th ed.) 446.

   See LAW, 62.

2. Necessity creates the law,—it supersedes rules; and whatever is reasonable and just in such cases is likewise legal.—*Sir W. Scott*, "The Gratitudine" (1801), 3 Rob. Adm. Rep. 240.

   See CRIMINAL JUSTICE, 43; HUSBAND AND WIFE, 11; JURY, 30; MISCELLANEOUS, 56.

New Trial.

1. There is no doubt now, that now-a-days, on proper ground, we would grant a new trial.[2]—*Lord Mansfield*, Rex *v.* Curril (1773), Lofft. 156.

2. Motions for new trials have been very much encouraged of late years, and I shall never discourage them; for nothing tends more to the due administration of justice, or even to the satisfaction of the parties themselves, than applications of this kind.—*Buller*, J., Vernon *v.* Hankey (1787), 2 T. R. 120.

   See 3, *below*; JUSTICE, 6.

3. Though this motion for a new trial is an application to the discretion of the Court, it must be remembered that the discretion to be exercised on such an occasion is not a wild but a sound discretion, and to be confined within those limits within which an honest man, competent to discharge the duties of his office, ought to confine himself. And that discretion will be best exercised by not deviating from the rules laid down by our predecessors; for the practice of the Court forms

[1] *Twisden* and *Mallet*, JJ.

Necessitas non habet legem: Necessity has no law.—*Plow.* 18.

Necessity is the law of the time and action, and things are lawful by necessity, which otherwise are not; "*Quicquid necessitas cogit, defendit*"; and the law of the time must regulate the law of the place in such public things.—*Sir Ed. Littleton* (Sol.-Gen.), Hampden's Case (1637), 3 How. St. Tr. 927.

Necessitas est lex temporis et loci: Necessity is the law of time and place.—*Hale's* P. C. 54.

Necessity, the tyrant's plea.—*Milton*, "Par. Lost," Bk. IV., line 393.

[2] I am clearly of opinion that there ought to be a new trial. These are my sentiments: my brothers will judge whether I am right or not.—*Lord Mansfield*, Bright *v.* Eynon (1757), 1 Burr. Part IV. 396. The expression "brothers" will be found explained under JUDGES, 53, *n.*, *antè*, p. 118.

One was ordered by the Judge of assize to be hanged in chains; the officers hung *in private solo:* the owner brought trespass; and upon not guilty, the jury found for the defendant, and the Court would not grant a new trial, it being done for convenience of place, and not to affront the owner (Sparks *v.* Spicer (1698), 2 Salk. 648). "Mich. 10 W. 3, *per Holt*, Chief Justice: If a man be hung in chains upon my land, after the body is consumed, I shall have gibbet and chain—said upon a motion for a new trial."—1 *Ld. Raym.* 738.

New Trial—*continued.*

the law of the Court.[1]—*Lord Kenyon*, C.J., Wilson *v.* Rastall (1792), 4 T. R. 757.

See 2, *above*; PRACTICE, 2, 11.

Nonsuit.

It is a great satisfaction to a Judge, that a nonsuit is not conclusive.[2]—*Lord Mansfield*, Brookshaw *v.* Hopkins (1773), Lofft. 244.

See APPEALS, 1; COUNSEL, 12, 13, *n.*

Notice to Quit.

It seems to me that each case must be taken by itself, and that one decision on the meaning of a notice to quit does not afford much guidance for the interpretation of a notice in different words. . . . We must remember that we are dealing with sensible people, and we must try to interpret the notice as if it were given by a man of sense. —*Ridley*, J., Wride *v.* Dyer (1899), L. R. 1 Q. B. D. [1900], p. 25.

See ADMINISTRATION OF JUSTICE, 11.

[1] See also *per Parker*, C.J., and *Eyre* and *Powell*, JJ., in Reg. *v.* Ballivos, &c. de Bewdley (1712), 1 P. Wms. at p. 211 *et seq.*, more particularly in reference to the "history" of new trials.

[2] It has been often laid down, that if a Judge gives it as his opinion that the plaintiff should be non-suited, and counsel submit to the direction, it is not to be imputed as a fault of the counsel.—*Lord Mansfield*, Harris *v.* Butterley (1775), 1 Cowp. 484. Judges ought to lean against every attempt to nonsuit a plaintiff upon objections which have no relation to the real merits: much more, when the plaintiff is clearly entitled to recover upon the merits, and must recover in another action.—*Lord Mansfield*, Morris *v.* Pugh (1761), 3 Burr. Part IV. 1243. A nonsuit is the same as discontinuance by leave of the Court. This *dictum* of Lord Mansfield is very clear. Formerly when the Judge considered that a plaintiff had not made out his case, he intimated the fact to him, and the plaintiff, if he was wise, absented himself and did not follow up his action; hence it was "*non prosequitur*" and he could bring it again. It was so unusual to disregard the suggestion of the Judge, who after the view he had expressed, if the case went on, would be sure to decide for the defendant (and then the plaintiff could not sue again), that Judges got into the habit of nonsuiting without consulting the plaintiff at all. But still the plaintiff could object, though it would be very foolish. Hence for counsel to submit to the Judge's direction and not to go on in his teeth, cannot in any case be considered as a fault in counsel, for he sees what ruling the Judge will give if the case goes on, and by taking a nonsuit, preserves for his client the right to bring a fresh action. The law upon nonsuit at the present day is briefly this. The Judicature Rules of 1875 (O. 41, r. 6) provided that a judgment for nonsuit should be final. The Rules of 1883, repealing the Rules of 1875, made no provision as to nonsuit. In the latest case, *Fox* v. *The Star Newspaper Co., Ltd.* (1898), L. R. 1 Q. B. 636, affirmed L. R. A. C. (1900), p. 19, it was decided that "nonsuit" is covered by O. 26, r. 1, which provides (*inter alia*) that the Court may allow a plaintiff to discontinue at any time. When the parties are face to face in Court it is only at the discretion of the Judge that the plaintiff may withdraw, reserving to himself the privilege of bringing another action. It is only before the hearing that the plaintiff can discontinue without leave of Court. This discontinuing practically covers nonsuit. It is the same thing. Therefore nonsuit by right is a thing of the past.

Obiter Dicta.

1. I believe that *obiter dicta*, like the proverbial chickens of destiny, come home to roost[1] sooner or later in a very uncomfortable way to

[1] Thus the *Law Times:* "We are very glad to hear it, and trust that Her Majesty's Judges will note and remember this piece of forensic natural history."—*L. T. Jour.*, 1888, p. 272.

"*Obiter Dicta*," said John A. Finch at the recent banquet of the Indiana State Bar Association, "is not statutory Latin, and we have no information as to how the words would have been translated by the Commissioners who prepared our first Code, had they been required to make such an attempt. The law dictionaries and the Courts translate these words as a phrase, and give us rather an exegesis than a translation. '*Dicta*,' says a Judge of the New York Court of Appeals, 'are opinions of a Judge which do not embody the resolution or determination of the Court, and made without argument or full consideration of the point; they are not the professed, deliberate determinations of the Judge himself. '*Obiter dicta*,' he says, 'are such opinions, uttered by the way, not upon the point or question pending, as if drawn aside for the time from the main topic of the case to collateral subjects.'

"An old Judge is quoted as saying, 'An *obiter dictum*, in the language of the law, is a gratuitous opinion, an individual impertinence.'

"I am not much of a dictionary maker, but I believe I could improve upon either and say, 'An *obiter dictum* is the passing opinion of a Judge expressed when it is not called for.'

"A great Judge was asked, 'What is the difference between law and equity?' 'Very little in the end,' responded his lordship; 'at common law you are done for at once; in equity you are not so easily disposed of. The former is a bullet which is instantaneously and charmingly effective; the latter, the angler's hook, which plays with the victim before it kills him. Common law is prussic acid, equity is laudanum.'

"Whether a man goes down with a law bullet in a vital part or is wearied out as is the fish before being landed, where he may gasp his life out; whether he dies with one convulsion after a swallow of prussic acid or dreamily passes away in the solace of an opium overdraught, is perhaps no matter in the end. In the processes there is a vast difference, but the tombstones—the reports of that Court which has the last say—read very much alike. The figure is, perhaps, not a bad one.

"There is a deal of difference in what should be on the monument and what is on it, and there is equal difference in what should be in the opinions of the Courts of last resort and what the Judges speaking for the Court find time to inject. The elegies and eulogies on the plain memorial slab and the massive monument are often *obiter*—not meant seriously—and superfluous. The Judges of the law Courts in bank and the Chancellors in their meditative chambers are as much given to superfluous utterances as are the post-mortem inscription in marble. *Obiter dicta* is a vice common to both.

"A child wandering in a cemetery, after reading the effusive inscriptions, all too superfluous after the statement that a dead man is below, asks where the bad people are buried. A reader of reports, searching for authority, sighs that so much is said when so much less would amply suffice.

"We are taught that we may disregard all *obiter dicta*, but, as we are never sure what the law in a given case is until some Court has given an opinion in the reports, equally are we never sure what is unnecessary law, the *obiter dicta* of an opinion, until some later Court so informs us. That which we have for years quoted as authority is, in later expressions, stripped of its conclusiveness and made simply an impertinence. Not only does the superfluous expression which has been cited or acted upon as decisive become indecisive, it becomes a reproach to the Judge who wrote it.

"This sort of thing reminds one of what Artemus Ward said in his lecture on the Mormons: 'One of the principal features of my entertainment is that it contains so many things that don't have anything to do with it.' We have been succeeding or failing because of something in an opinion which turns out to have no right to a place in the judicial utterance. A man who has carefully wound up his clock every night for twenty years and then learns that it is an eight-day clock

Obiter Dicta—*continued.*

the Judges who have uttered them, and are a great source of embarrassment in future cases.—*Bowen*, L.J., Cooke *v.* New River Co. (1888), L. R. 38 C. D. 70.

See DICTUM; PRACTICE, 4.

has less reason for feeling bad than a lawyer who has lost a case or been guided in advice given by something that turns out to be *obiter*.

"After having bowed to the supposed law, as found in an opinion of a High Court for years, we are suddenly told that the Judge who wrote the opinion was 'off his base,' so to speak, and what he said was not the law at all, or, at least, he had no business to have then said it was the law.

"Take the case of the *Home Insurance Company* v. *Morse*, in which the Supreme Court of the United States held that a statute of Wisconsin requiring an insurance company of another State to agree that it would not remove a case against it to the United States Circuit Court was 'illegal and void' and therefore not binding on the company. Then read, and rub your eyes as you read, the same Court in *Doyle* v. *The Continental Insurance Company*, in which it was held that the State may prescribe any condition that it may deem proper, whether constitutional or not, upon which corporations of other States may enter its borders, using language which was long held as a sword over companies that contemplated taking a case to the United States Circuit Court in that State, or in other States having a like statute. Years afterwards we have from the same Court *Barron* v. *Burnside*, in which it was held that the ominous part of *Doyle* v. *The Continental Insurance Company* was *obiter dictum;* holding further that no conditions can be imposed by a State upon corporations foreign to it which are repugnant to the Constitution and laws of the United States. Such an episode reminds one of the trick on Falstaff that was 'argument for a week, laughter for a month, and a jest for ever.'

"Borne says, 'Nothing is permanent but change.' And so we have to say of the law. We can never rest secure upon any opinion until we have searched later reports for an opinion modifying or reversing it or declaring some of its vital parts *obiter dicta*.

"Polonius asked Hamlet what he was reading. 'Words, words, words,' said Hamlet, and called the writer a 'satirical rogue.' Ben Butler was seen in a railroad train reading what appeared to be a law book, and was asked, 'Are you reading law, general?' 'No,' said he; 'only a volume of Massachusetts reports.'

"There are 166 volumes of Massachusetts reports, 160 volumes of United States Supreme Court reports, and hundreds and thousands of reports of other States. Every year adds to the reports of the Courts of this country about 250 volumes and about sixty volumes of text-books. 'Words, words, words.' Ben Butler to the contrary notwithstanding, all of these words are law unless they have been pronounced *obiter dicta*.

"Does anybody believe we can allow our presses to go on for ever belching out books that are of such value that every lawyer must know what is or what is not in the motley throng before he can feel safe? Nay, verily. There must, in some way, from somewhere, come relief.

"The supposed great library at Alexandria was destroyed by the men of Mohammed for the, to them, satisfactory reason that if the books in it agreed with the Koran they were unnecessary, and if they did not agree with it they were unsound. Will ever some devoted advocate or some legions of such devotees of the real law—the red-eyed kind, if you please—arise and settle this question by a conflagration?

"Oliver Wendell Holmes said he doubted not that if all the medicines in the world were dumped into the sea it would be a great deal better for the human family, though a great deal worse for the fishes. Some such remark could be made about our voluminous libraries. If something violent should happen to all the law reports now crowding our shelves, and all, or nearly all, of the books of alleged authors on particular branches of the law—such books being in the main a product of scissors, paste-pot, and a 10-dollars-a-week drudge—would anybody suffer?

"A long time ago an old man wished that his adversary would write a book. It needs no argument to prove that no lawyer ever said that; our enemies have

Obiter Dicta—*continued.*

2. This mere *obiter* opinion ought not to weigh against the settled direct authority of the cases which have been deliberately and upon argument determined the other way.—*Lord Mansfield,* Saunderson *v.* Rowles (1766), 4 Burr. Part IV. 2069.

See also DICTUM, 4.

Opening Speech.

1. Do not open that which is not evidence.—*Bayley,* J., Trial of Knowles (1820), 1 St. Tr. (N. S.) 505.
2. This case not having been opened has thrown a difficulty upon the Court—without presuming to say it ought not to have been the course, considering the state of the matter; I am thinking of the inconvenient situation in which the Court is placed. Parties, I think, should act upon the law as it stands. The usual course is for the counsel for the prosecution to state the facts without reasoning upon them, and such facts as may lead one's attention to that which may be the real question of law in the case. But if a contrary course is to be adopted, and an opening is to be done without, we shall be in great difficulty at the end of the cause.—*Gaselee,* J., Fursey's Case (1833), 1 St. Tr. (N. S.) 558.[1]

See 4, *below;* PRACTICE, 22.

written books, lots of them; too many of them such as they are; and the spoiling of paper goes merrily on. 'Much study is a weariness of the flesh,' it is true, but winnowing chaff for an occasional grain of wheat is more weariness still. Are we for ever to roll at the ever increasing stone of Sisyphus, or shall we make some effort to relieve ourselves and our successors?

"I am myself a lecturer on a branch of the law in a reputable law college. At the beginning of my course, or at the end, or, mayhap, many times *ad interim,* I tell my classes there is no logical, coherent, justifiable law on the subject; that there are decisions galore, and that those decisions will control in the trial Courts, not because they are right, but because they are decisions bound in calf, or sheep, or hide of some other animal. I advise them to search well these volumes in animal skin, and say that the lawyer who finds most opinions leaning his way will succeed the best. It is not a question of logic or elementary law of the sort that is the 'perfection of reason.' It is simply a question of numerical strength. 'The Lord is on the side of the heaviest battalions,' said Napoleon.

"Indiana has more Courts and more Judges and annually issues more reports than all England. Our reports seem to get more voluminous and contain less law. The first volume of Blackford has 432 pages and contains 504 cases. The last volume of Indiana reports has 700 pages and 179 cases. Comparison of the first and last volume of reports of any other State will show like numerical results. Does this signify? Yes, verily, it does signify. It signifies all too much. Do lawyers at the bar or Judges on the bench carefully reason or copiously remember? Is the law a matter of reasoning, or is it a matter of searching for cases in point?

"*Obiter dicta* might be applied to many a volume in its entirety, to many a page of opinion for its mere prolixity.

"Men and brethren, what shall we do to be saved." *

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* *Albany Law Journal.*—See *Law Times,* Nov. 6, 1897, p. 16.

[1] That is the great difficulty in not having an opening speech. If there is a speech without any observations, I think it beneficial.—*Parke,* J., *id.*

Opening Speech—*continued.*

3. It is manifestly fallacious to make the opening of counsel the test on the question of what is "the act or transaction which the Crown prosecutes." It is plain that the Court is not at all bound by the statements made by the counsel in his address.[1]—*Williams*, J., Reg. *v.* Bird *et uxor* (1851), 5 Cox, C. C. 65.

See COUNSEL, 13; JUDICIAL PROCEEDINGS, 13.

4. What is introductory goes for nothing, but it is in order to explain the evidence.—*Pratt*, C.J., Layer's Case (1722), 16 How. St. Tr. 181.

See 2, *above.*

Pardon.

1. If you will apply yourself to the King, you may, and there, perhaps, you may find mercy; we must, according to the duty of our places and oaths, give such judgment as the law requires.[2]—*Jefferies*, L.C.J., Hampden's Case (1684), 9 How. St. Tr. 1126.

See JUSTICE, 5; PUNISHMENT, 4.

2. We cannot pardon. We are to say what we take the law to be: if we do not speak our real opinions, we prevaricate with God and our own consciences.—*Lord Mansfield*, Case of John Wilkes (1763), 4 Burr. Part IV. 2562.

See JUDGES, 37; POLITICS, 3, 4; PUNISHMENT, 3.

3. Mercy is in the King's breast, but is no part of our province: and therefore your application on that head must be elsewhere.—*Lord Mansfield*, Rex *v.* Florence Hensey (1758), 1 Burr. Part IV. 650.

See ADMINISTRATION OF JUSTICE, 32; CRIMINAL JUSTICE, 25; JUDGES, 23, 37; LAW, 48; POLITICS, 4.

4. Where a person interposes his interest and good offices to procure a pardon, it ought to be done gratuitously and not for money.—*Lord Eldon*, C.J., Norman *r.* Cole (1801), 3 Esp. 253.

See CRIMINAL JUSTICE, 41, 42; EVIDENCE, 28; LITIGATION, 3; MONEY, 1; PUBLIC SERVANT, 6.

[1] "If Mr. Attorney in opening does say anything that he ought not to say, I will correct him, as I would do anybody that does not open things right as they are proved; but pray don't you that are at the bar interrupt one another, it is unbecoming men of your profession to be chopping in and snapping at one another. Go on, Mr. Attorney."—*Wright*, L.C.J., Trial of the Seven Bishops (1688), 12 How. St. Tr. 341.

[2] *Raleigh:* Oh my lord, you may use equity.

Popham, C.J.: That is from the King; you are to have justice from us.—*Trial of Sir Walter Raleigh* (1603), 2 How. St. Tr. 16.

Sequi debet potentia justitiam non præcedere: Power should follow justice, not precede it.—2 *Inst.* 454.

"May one be pardoned and retain the offence?"—*Shaks.*, "Hamlet."

Parent and Child.

1. Human society was so constituted, for human nature was so constituted, that the honour and dignity of a father were connected with that of a son; and there was no son who must not be disturbed and disquieted by imputations on his father.—*Abbott*, C.J., King *v.* Hunt (1824), 2 St. Tr. (N. S.) 100.
2. The authority of a father to guide and govern the education of his child is a very sacred thing, bestowed by the Almighty, and to be sustained to the uttermost by human law. It is not to be abrogated or abridged, without the most coercive reason. For the parent and the child alike, its maintenance is essential, that their reciprocal relations may be fruitful of happiness and virtue; and no disturbing intervention should be allowed between them whilst those relations are pure and wholesome and conducive to their mutual benefit.[1]—*Lord O'Hagan*, *In re* Meades (1870), 5 Ir. L. R. Eq. 103.

   See FAMILY.
3. As a man of the world, and speaking as a father, I am satisfied that solitary children are not so happy, and not so likely to make good men and women, as children brought up in the society of brothers and sisters in early life.—*Jessel*, M.R., *In re* Besant (1879), L. R. 11 C. D. 512.
4. When we talk of parental influence we do not think of terror in connection with it—that is not the primary idea—it is not terror and coercion, but kindness and affection, which may bias the child's mind, and induce the child to do that which may be highly imprudent, and which, if the child were properly protected, he would never do.—*Lord Hatherley*, L.C., Turner *v.* Collins (1871), L. R. 7 Ch. Ap. Ca. 340.

   See MISCELLANEOUS, 21.
5. The welfare of a child is not to be measured by money only, nor by physical comfort only.—*Lindley*, L.J., *In re* McGrath (Infants), L. R. 1 C. D. (1893), p. 148.
6. A father, by the law of God and nature, is bound to support his son, and *è contra*, in case the father is empoverished.—*Wyndham*, J., Manby *v.* Scott (1672), 1 Levinz, 4; 2 Sm. L. C. (8th ed.) 472.
7. It is as unnatural to force a child from the mother as from the father.—*Parker*, C.J., Inhabitants of St. Katherine *v.* St. George (1714), Fortescue, 218.

[1] See *In re* Agar-Ellis, Agar-Ellis *v.* Lascelles, L. R. 10 C. D. 49.

"The rights of a father are sacred rights because his duties are sacred duties."—*Brett*, M.R. (1883), *id.*, L. R. 24 C. D. 329.

"The Court must never forget, and will never forget, first of all, the rights of family life which are sacred."—*Bowen*, L.J. (1883), *id.*, L. R. 24 C. D. 337.

Parent and Child—*continued.*

8. In one sense all British Subjects who are infants are wards of Court, because they are subject to that sort of parental jurisdiction which is entrusted to the Court in this country, and which has been administered continually by the Courts of the Chancery Division.[1]—*Kay*, L.J., Brown *v.* Collins (1884), L. R. 25 C. D. 60.

See also INFANT, 3.

Parliament.

1. This Court is a standing Court, and the law doth adjourn it from time to time: but a Parliament is a new Court, they appear, and are always summoned by new writs.—*Rolle*, C.J., Case of Captain Streater on an *Habeas Corpus* (1653), 5 How. St. Tr. 400.
2. The Crown used to call a Parliament annually, but there was not an annual election. These words, *annuo parliamento*, relate to the time of their meeting, and not their election.—*Rooke*, J., Trial of Redhead *alias* Yorke (1795), 25 How. St. Tr. 1081.
3. To one who marvelled what should be the reason that Acts and Statutes are continually made at every Parliament, without intermission, and without end, a wise man made a good and short answer, both which are well composed in verse:

> "Quæritur, ut crescunt tot magna volumina legis?
> In promptu causa est, crescit in orbe dolus."[2]

—*Lord Coke*, Twyne's Case (1602), 3 Rep. 80.

See also ADMINISTRATION OF JUSTICE, 15; CRIMINAL JUSTICE, 29; CHANCERY, 10; LAW, 3; STATUTES, 2.

[1] But it must be remembered that this parental authority is only exercised when the infant has property, because the Court deems that it has nothing to exercise its jurisdiction upon.

[2] If the wise man had given his answer in these days, it must have been at somewhat greater length. If some member were to move for a return of the comparative increase in different years of the volumes of the statutes, of the wise man's supposition, what an appalling picture must be drawn of the increase of villany in the world. It is some small satisfaction to know that the wickedness of mankind is not the principal cause of the great accumulation of statutes, but that it is principally due to a combination of ignorance and laziness in the legislature. It is now found to be the most convenient course, before legislating on any subject, to repeal all the existing statutes on the subject, and insert the clause verbatim in the new bill, with any new clauses that may be thought necessary: "There is no providence or wisdom of man, nor of any council of men," says Sir Robert Atkyns, L.C.B., "that can foresee and provide for all events and variety of cases, that will or may arise upon the making of a new law."—*Trial of Sir Edw. Hales* (1686), 11 How. St. Tr. 1208.

The causes of the multiplicity of the English laws are, the extent of the country which they govern; the commerce and refinement of its inhabitants; but above all, the liberty and property of the subject.—*Sir Wm. Blackstone* (1765), Com. Bk. III., ch. 25, p. 234.

The multiplicity of our laws is a price we pay for our freedom.—*Montesquieu.*

They who exclaim against the multi-

Parliament—*continued.*

4. *Lex Parliamenti* is to be regarded as the law of the realm; but, supposing it to be a particular law, yet if a question arise determinable in the King's Bench, the King's Bench ought to determine it.—*Bridgman*, C.J., Binion *v.* Evelin (1662), Dyer, 60; Carth. 137; 1 Show. 99.

   See CROWN.

5. If a man be committed by Parliament, and the Parliament is prorogued, the King's Bench will grant a *habeas corpus*. The common law then does not take notice of any such law of Parliament to determine inheritance originally. If there is any such, it ought either to be by act of Parliament, and there is no such act; or it ought to be by custom, and no more is there any such custom.[1]—*Lord Holt*, Rex et Reg. *v.* Knollys (1694), 1 Ld. Raym. 11.

   See LAW, 64.

plicity of our laws, are fond of quoting the passage in *Tacitus*, where he says, "*Corruptissima Respublica, plurimæ Leges*"; but they should consider that the historian does not throw this out as a *general* reflection, but as applicable to the *particular* circumstances of *Rome* during the licentious authority of the Tribunes; when, in contravention to the laws of the Twelve Tables, particular and partial laws were made by the influence of *private* men: The Twelve Tables provided that no laws should be made by private persons, and that no capital punishments should be adjudged, but at the *Comitia Centuriata*. The frequent revolutions, however, among the *Romans*, rendered these provisions ineffectual; for whenever the lawless attempts of an ambitious leader prevailed, the Usurper instantly commenced Legislator: And consequently in this corrupt State of the Commonwealth, the laws, as *Tacitus* observeth, were very numerous.—See *Cicero pro Sextio*—and *id. pro Domo Sua; Ruffhead*, "Statutes at Large" (ed. 1786), xxi.

The multiplication and growth of the laws are urged by *Hale* as inducing a necessity for their revision and reduction: "By length of time and continuance, laws are so multiplied and grown to that excessive variety, that there is a necessity of a reduction of them, or otherwise it is not manageable. . . And the reason is, because this age, for the purpose, received from the last a body of laws, and they add more, and transmit the whole to the next age; and they add to what they had received, and transmit the whole stock to the next age. Thus, as the rolling of a snowhall, it increaseth in bulk in every age till it becomes utterly unmanageable. And hence it is that, even in the laws of England, we have so many varieties of forms of conveyances, feoffments, fines, release, confirmation, grant, attornment, common recovery deeds enrolled, &c., because the use coming in at several times, every age did retain somewhat of what was past, and added somewhat of its own, and so carried over the whole product to the quotient. And this produceth mistakes: a man, perchance, useth one sort of conveyance where he should have used another. It breeds uncertainty and contradiction of opinion, and that begets suits and expense. It must necessarily cause ignorance in the professors and profession itself, because the volumes of the law are not easily to be mastered."

[1] This was a case in which an indictment was found against the defendant, by the name of Charles Knollys, Esq., for murder, the defendant pleaded a misnomer in abatement, viz. that William Knollys, Viscount Wallingford, by letters patent under the great seal of England, bearing date the 18th August, 2 Car. I., was created Earl of Banbury; that William had issue Nicholas, who succeeded William in his dignity, from whom it descended upon the defendant, as son and heir to Nicholas. The replication to

Parliament—*continued.*

6. This Court (Lords House of Parliament), which ought to be an example to all other Courts, will ever hold in the highest reverence the indulgent character of British justice.—*Lord Erskine*, L.C., Trial of Lord Viscount Melville (1806), 29 How. St. Tr. 1249.

   See CRIMINAL JUSTICE, 26.

7. We cannot hear the integrity and wisdom of Parliament questioned in this Court.—*Abbott*, C.J., King *v.* Edmonds and others (1821), 1 St. Tr. (N. S.) 927.

8. The House of Commons are a great branch of the Constitution, and are chose by ourselves, and are our trustees; and it cannot be supposed, nor ought to be presumed, that they will exceed their bounds, or do anything amiss . . . this is a very foreign supposition, and what ought not to be said by any *Englishman*.—*Powys*, J., Reg. *v.* Paty (1704), 2 Raym. 1109.

   See below, 11, 13; MOTIVES, 14; PUBLIC SERVANT, 1.

9. Every facility ought undoubtedly to be given to all persons applying to either House of Parliament or to any Court of Justice for the redress

this plea was, that the defendant upon the 13th December, 4 Will. & M., preferred a petition to the House of Peers, then in parliament assembled, that he might be tried by his peers, and that after long considerations and debates, the House dismissed his petition, secundum Legem Parliamenti, and disallowed his peerage, and made an order that the defendant should be tried by the course of the common law, &c. To this replication there was a demurrer, and after several arguments at the bar by Sir Ed. Ward, Attorney-General, Sir Thos. Trevor, Solicitor-General, and Sir Wm. Williams, for the Crown, and by Serjt. Pemberton, Serjt. Levinz, and Sir Bartholomew Shower for the defendant, the Court unanimously gave judgment for the defendant. It appears, that in that case, the Judges, though concurring in opinion, delivered their judgments *seriatim*. Though the report of Lord Holt's judgment in Lord Raymond is rather meagre, quite sufficient appears to show that it was marked by the usual ability of that learned and independent Judge; and he distinctly laid down the position that Lex Parliamenti, if a question concerning it arise in the common law Courts, ought to be determined there, and that the Houses of Parliament can have no privileges but such as a statute or custom have entitled them to. The case of Rex *v.* Knollys presents a similarity in another respect to that of Stockdale *v.* Hansard (2 Per. & D. 1; 9 Ad. & E. 1; 3 Jur. (O. S.) 905). The House of Lords waited until judgment had been given upon the demurrer, before they attempted to conform their pretensions to an exclusive privilege which they did not think it expedient to persevere in. The reporter adds the following note to the case:—

"Note, that this judgment was very distasteful to some lords; and, therefore, *Hilary* Term, 1697, 9 Will. III., the Lord Chief Justice *Holt* was summoned to give his reasons of this judgment to the House of Peers, and a committee was appointed to hear and report them to the House, of which the Earl of *Rochester* was chairman. But the Chief Justice *Holt* refused to give them in so extrajudicial a manner. But he said, that if the record was removed before the Peers by error, so that it came judicially before them, he would give his reasons very willingly, but, if he gave them in this case, it would be of very ill consequence to all Judges hereafter, in all cases. At which answer some lords were so offended, that they would have committed the Chief Justice to the Tower. But, notwithstanding, all their endeavours vanished in smoak."—*See also* JUDGES, 45, *infrà*; *antè*, p. 116.

Parliament—*continued.*

of any alleged grievance.—*Littledale*, J., Stockdale *v.* Hansard (1837), 3 St. Tr. (N. S.) 922.

See Doctrine, 3; Equity, 26; Freedom of Speech; Justice, 4; Law, 66; Relief, 3; Tort, 2, 8.

10. The House of Commons are the representatives of the people.—*Gould*, J., Reg. *v.* Paty (1704), 2 Raym. 1107.

11. It would look very strange, when the Commons of *England* are so fond of their right of sending representatives to Parliament, that it should be in the power of a sheriff, or other officer, to deprive them of that right, and yet that they should have no remedy; it is a thing to be admired at by all mankind.—*Holt*, C.J., Ashby *v.* White (1703), 2 Raym. 954.

See 8, *above;* Public Servant, 1, 10.

12. I disclaim the power of legislation which is asserted to exist in this Court, and I say that, if such a right is to be created, it must be created by the Legislature properly so called.—*Jessel*, M.R., Day *v.* Brownrigg (1878), L. R. 10 C. D. 302.

See Judges, 33; Law, 29, 49, 71.

13. It is the province of the statesman and not the lawyer to discuss, and of the legislature to determine, what is the best for the public good, and to provide for it by proper enactments. It is the province of the Judge to expound the law only—the written from the statute, the unwritten or common law from the decisions of our predecessors and of our existing Courts—from the text-writers of acknowledged authority, and upon the principles to be clearly deduced from them by sound reason and just inference—not to speculate upon what is the best, in his opinion, for the advantage of the community.—*Coleridge*, J., Brownlow *v.* Egerton (1854), 23 L. J. Rep. Part 5 (N. S.), Ch. 370.

See above, 8; *below*, 14; Construction, 19, 28; Crown; Doctrine, 3; Foreign Law, 5; Judges, 28, 30; Law, 44; Liberty of the Subject, 2; Statutes, 4, 13, 15; Text Books, 4.

14. If the legislature have not gone far enough, it is for them, not for us, to remedy the defect.—*Chambre*, J., Grigby *v.* Oakes (1801), 1 Bos. & Pull. 529.

See above, 13; Law, 49.

15. It is for the legislature to alter the law if Parliament in its wisdom thinks an alteration desirable.—*Lord Macnaghten*, Hamilton *v.* Baker, "The Sara" (1889), L. R. 14 Ap. Ca. 227.

See below, 16; Judges, 33; Statutes, 3.

Parliament—*continued.*

16. To abolish a well-established rule of law because it is a bad rule, is the business of the legislature.—*Stephen*, J., Reg. *v.* Coney and others (1882), 15 Cox, C. C. 59.

See above, 15.

17. What the legislature has not expressly enacted, the Judges ought not to presume that it intended.—*Lord Chelmsford*, Mordaunt *v.* Moncreiffe (1874), L. R. 2 Sc. & D. 387.

See Equity, 10; Foreign Law, 5; Judges, 33; Law, 44; Motives, 14; Statutes, 15, 19.

18. The decisions of the House of Lords are binding on me and upon all the Courts except itself.—*Sir John Romilly*, M.R., Att.-Gen. *v.* The Dean and Canons of Windsor (1858), 24 Beav. 715.

See below, 19; Appeals, 6; Privy Council.

19. By the Constitution of this United Kingdom, the House of Lords is the Court of Appeal in the last resort, and its decisions are authoritative and conclusive declarations of the existing state of the law, and are binding upon itself when sitting judicially, as much as upon all inferior tribunals. The observations made by members of the House, whether law members or lay members, beyond the *ratio decidendi* which is propounded and acted upon in giving judgment, although they may be entitled to respect, are only to be followed in as far as they may be considered agreeable to sound reason and to prior authorities. But the doctrine on which the judgment of the House is founded must be universally taken for law, and can only be altered by Act of Parliament.[1] So it is, even where the House gives judgment in conformity to its rule of procedure, that where there is an equality of votes, *semper presumitur pro negante.*[2]—*Lord Campbell*, L.C., Att.-Gen. *v.* Dean and Canons of Windsor (1860), 8 H. L. Cas. 391; 30 L. J. Ch. 531.

See above, 18, *and references therefrom.*

Payment into Court.

I have looked into the books in order to discover the origin of the

[1] See also to similar effect *per Lord Truro*, L.C., Tommey *v.* White and others (1850), 3 H. L. C. 69; *Lord Cranworth*, L.C., *Ex parte* White and others *v.* Tommey (1853), 4 H. L. C. 333; *Lord St. Leonards*, Wilson *v.* Wilson and others (1854), 5 H. L. C. 63; *Lord Campbell*, Beamish *v.* Beamish (1861), 9 H. L. C. 338. See *per Jessel*, M.R., Redgrave *v.* Hurd (1881), 20 C. D. 14; 51 L. J. Ch. 118; *Lord Esher*, M.R., Guardians of Poor of West Derby Union *v.* Guardians of Poor of Atcham Union (1889), 24 Q. B. D. 120; 59 L. J. M. C. 17; and *Lord Coleridge*, Overseers of Manchester *v.* Guardians of Ormskirk Union (1890), 24 Q. B. D. 682; 59 L. J. M. C. 104.

Payment into Court—*continued.*

proceeding of paying money into Court, but without being able to fix the period of its commencement, though I think it highly probable that it took its rise early in the present century.—*Heath*, J., Gutteridge *v.* Smith (1794), 2 H. B. 376.[1]

Peerage.

1. It is, if I may so express myself without disrespect, the duty of the Sovereign to confer the peerage as the reward of merit, or the incitement to great and good actions, or for the public benefit, as a mode of placing the individual in a better position to render public service. To suppose, then, that the Sovereign will be at all influenced by any other motives in the exercise of this most important prerogative is indecent, and, in a legal sense, unreasonable.—*Coleridge*, J., Brownlow *v.* Egerton (1854), 23 L. J. Rep. Part 5 (N. S.), Ch. 367.

   See also HONOURS.

2. The creation of a peer is an exercise of one of the prerogatives of the Crown, which the Crown possesses, like all other prerogatives, for the good of the country, and which ought to be exercised solely with reference to the public welfare and the merits of the individual to be promoted, and the cause or occasion of his promotion.—*Parke*, B., Egerton *v.* Earl Brownlow and others (1853), 8 St. Tr. (N. S.) 251.

   See PUBLIC SERVANT, 4.

Perjury.

I think it is a canon, which any one who is familiar with Courts of justice will recognise as a just one, that instead of assuming that people are perjuring themselves, you should, if there is a view by which you can reconcile all the testimony, prefer that to the view which places people in the position of contradicting each other, so that they must necessarily be swearing what is false. . . . The point as to having seen the witnesses and having had an opportunity of judging whether they were speaking the truth or not is generally a very powerful one.[2]—*Earl of Halsbury*, L.C., Owners of Steamship "Gannet" *v.* Owners of Steamship "Algoa" (1900), L. R. App. Cas. [1900], p. 238.

See EVIDENCE, 29.

[1] Payment of money into Court is an admission of a *legal* demand only. See Ribbans *v.* Crickett and another (1798), 2 Bos. & Pull. 264; Wright *v.* Laing (1824), 3 B. & C. 165. See also L. T., Vol. CII. (February 6th, 1897): "Payment into Court 'without prejudice,'" p. 312.

[2] We can judge only from appearances, and from the evidence produced to us.—*Legge*, B., Trial of Mary Blandy (1752), 18 How. St. Tr. 1188.

Pleadings.

1. Let us stand by the rules of pleading, which if we infringe here, we may destroy altogether.[1]—*Eyre*, C.J., Jones *v.* Kitchin (1797), 2 Bos. & Pull. 81.
2. Pleading is an exact setting forth of the truth.—*Sir Robert Atkyns*, L.C.B., Trial of Sir Edw. Hales (1686), 11 How. St. Tr. 1243.
3. I hate and detest all frivolous pleas; but I never will make too much haste, in determining matters which may be of consequence to the subject.—*Lee*, C.J., The King v. Mayor of Heydon and others (1748), 1 Black. 35.

   See Administration of Justice, 2; Judges, 16, 17; Rights, 3; Statutes, 10.
4. *De puys ke vous ne volet respondre a leu verement ke ye vous tendent . . . nous le tenum agrante:* Since you will not answer to the averment which they offer to you . . . we take it for granted.—*Beresford*, J., Roger de Montgomery *v.* Simon de C. (1292), Year-book, 20 & 21 Ed. I., p. 276.

   See 5, *below;* Consent, 5; Law, 41; Motives, 12; Precedents, 20.
5. Wherever a man neglects to take advantage of any defence which he has at the time, he waives it.—*Buller*, J., Buxton *v.* Mardin (1785). 1 T. R. 81.

   See 4, *above;* Miscellaneous, 19, 33; Property, 12.
6. A plaintiff who comes into a Court of justice must show that he is in a condition to maintain his action.—*Lord Kenyon*, C.J., Morton *v.* Lamb (1797), 7 T. R. 129.

   See Equity, 26; Miscellaneous, 48; Process, 1; Prosecution; Relief, 3; Tort, 2.
7. The difficulty which I feel as a Judge, and always felt at the Bar, is this: a defendant is entitled to put his back against the wall and to fight from every available point of advantage.[2]—*Kekewich*, J., Blank *v.* Footman & Co. (1888), 57 L. J. (N. S.) C. D. 914.

   See Property, 14; Will, 2, *n.*
8. Each plea must stand or fall by itself.—*Buller*, J., Kirk *v.* Nowill (1786), 1 T. R. 125.
9. *Il serroit mervaillouse chose que vous avendrez a dedire et contrepleder ceo qe vous avez avant grante en Court de recorde:* It would be a strange thing if you could be admitted to deny and counterplead

[1] The following is a terse statement of an universal rule of civil and criminal pleadings: — "Good matter must be pleaded in good form, in apt time, and in due order, or otherwise great advantage may be lost."—*Co. Litt.* 303 a.

[2] This can be illustrated by the allowing of alternative pleadings in statements of defence, which may be contradictory and at variance with one another.

Pleadings—*continued.*

that which you have previously allowed in a Court of record.—*Schardelowe*, J., Writ of Entry *sur disseisin* against C. (1340), Year-book, 14 Ed. III., p. 40.

See COUNSEL, 23; PROCESS, 1; USAGE, 15.

10. The substantial rules of pleading are founded in strong sense, and in the soundest and closest logic; and so appear, when well understood and explained: Though, by being misunderstood and misapplied, they are often made use of as instruments of chicane.[1]—*Lord Mansfield*, Robinson *v.* Raley (1756), 1 Burr. 319.

See COSTS, 2; MISCELLANEOUS, 19.

11. In these days if there is a question to be decided on the evidence before the Court, we are not inclined to restrict the suitor very closely to the pleadings.—*Cotton*, L.J., White *v.* City of London Brewery Co. (1889), L. R. 42 C. D. 246.

See ADMINISTRATION OF JUSTICE, 5, 8, 14; AFFIDAVIT, 2.

12. I am sorry when any man is tripped by a formal objection.—*Park*, J., Aked *v.* Stocks (1828), 4 Bing. 509.

See CRIMINAL JUSTICE, 3, 6; COUNSEL, 22; EVIDENCE, 14, 16; WITNESS, 2.

Politics.

1. It cannot but occur to every person's observation, that as long as parties exist in the country (and perhaps it is for the good of the country that parties should exist to a certain degree, because they keep ministers on their guard in their conduct), they will have their friends and adherents. A great political character, who held a high situation in this country some years ago, but who is now dead, used to say that ministers were the better for being now and then a little peppered and salted. And while these parties exist, they will have their friendships and attainments, which will sometimes dispose them to wander from

[1] See also *Hale's* "Common Law," Vol. I. (ed. 1794), p. 302, n. Speaking of Sir Matthew Hale, Bishop Burnet says: "His father was a man of that strictness of conscience, that he gave over the practice of the law, because he could not understand the reason of giving colour in pleadings, *which, as he thought, was to tell a lye.* And that, with some other things commonly practised, seemed to him contrary to that exactness of truth and justice, which became a Christian, so that he withdrew himself from the Inns of Court to live on his estate in the country." "Colour," says Dr. Cowell, "signifies, in legal acceptation, a profitable plea but, in truth, false; and hath this end, to draw the trial of the cause from the jury to the Judges." He gives the following instance: "In an action of trespass for taking away the plaintiff's beasts, the defendant saith, that before the plaintiff had anything in them he himself was possessed of them as of his proper goods, and delivered them to A. to deliver to him again when he and A. gave them to the plaintiff; and the plaintiff supposing the property to be in A. at the time of the gift, took them from the plaintiff, whereupon the plaintiff brings an action: that," adds Dr. Cowell, "is a good colour and a good plea."

Politics—*continued.*

argument to declamation.—*Lord Kenyon*, Holt's Case (1793), 22 How. St. Tr. 1234.

See 7, *below;* MINORITIES, 2.

2. The learned counsel has very properly avoided all political discussions unconnected with the subject, and I shall follow his example. Courts of justice have nothing to do with them.—*Kenyon*, L.C.J., Trial of John Vint and others (1799), 27 How. St. Tr. 640.

See 5, *below;* JUSTICE, 1.

3. There may be cases in which there is so much of difficulty in knowing where the law stands that we take time to consider, and sometimes doubt much and sometimes differ among ourselves. But I believe every one of the Judges acts upon the principle that he is before man and God in the discharge of his duty, and acts upon his solemn oath, and declares the law not according to any political fancy, or for the purposes of serving one party or serving another, but according to the pure conviction of his own mind without looking to any party.—*Bayley*, J., Case of Edmonds and others (1821), 1 St. Tr. (N. S.) 899.

See 6, *below;* EVIDENCE, 29; JUDGES, 3, 26, 27, 37, 52, *n.*, 53, 76, 81, *n.*; JURY, 8; LAW, 46; PARDON, 2; TORT, 6.

4. The Constitution does not allow reasons of State to influence our judgments: God forbid it should! We must not regard political consequences, how formidable soever they might be: if rebellion was the certain consequence, we are bound to say, "*Fiat justitia ruat cœlum.*" The Constitution trusts the King with reasons of State and policy; he may stop prosecutions,[1] he may pardon offences[2]; it is his, to judge whether the law or the criminal should yield. We have no election.[3] —*Lord Mansfield*, Case of John Wilkes (1770), 19 How. St. Tr. 1112.

See also ADMINISTRATION OF JUSTICE, 20; JUDGES, 19, 20; PARDON, 1, 2, 3; PUBLIC SERVANTS, 5; SOVEREIGNTY, 10; TORT, 8.

[1] See *antè*, ATTORNEY-GENERAL, 1; also *per Serjeant Ellis* in Proceedings against Thomas Earl of Danby for high treason (1678—1685): "The regular way of pardons is by the Attorney-General and the Solicitor-General, &c. They are men of the law, and might stop it in their office, and the rest of the offices, &c. . . . To pardon before trial, when the King knows not what fact he is to pardon, is a dangerous precedent. . . . The King cannot pardon a man, an impeachment depending." (11 How. St. Tr. 773, 774.)

[2] Where the King has no share, and the King's Serjeant or Attorney-General prosecute not, and the King's name is not so much as mentioned, and only by the Commons of England, which the Courts of Westminster cannot punish; it is you that have the interest in the suit, and all the Commons of England.—*Sir Francis Winnington*, Proceedings against Thomas Earl of Danby, Grey's "Debates," Vol. VII. 167. See also 11 How. St. Tr. 786. It is the duty of the Lord Chancellor's place, if he thought it not a good pardon, to inform the King of it.—*Per Serjeant Ellis*, 11 How. St. Tr. 773.

[3] See also *per Lord Kenyon*, Reeve's Case (1754), 26 How. St. Tr. 591.

Politics—*continued.*

5. Political arguments, in the fullest sense of the word, as they concern the government of a nation, must be, and always have been, of great weight in the consideration of the Court.—*Lord Hardwicke*, The Earl of Chesterfield *v.* Janssen (1750), 1 Atk. 352; *id.* 2 Ves. Sen. 153.

   See 2, *above.*

6. I am in too high a situation to fear any man or class of men. I thank God I am in a position which puts me above politics.—*Earl of Clonwell*, Case of Glennan and others (1796), 26 How. St. Tr. 459.

   See 3, *above;* JUDGES, 20, *n.*

7. One cannot look too closely at and weigh in too golden scales the acts of men hot in their political excitement.—*Hawkins*, J., *Ex parte* Castioni (1890), 60 L. J. Rep. (N. S.) Mag. Cas. 33.

   See 1, *above;* MINORITIES, 2; VOTING.

8. Men argue differently, from natural phenomena and political appearances: they have different capacities, different degrees of knowledge, and different intelligence. But the means of information and judging are open to both: each professes to act from his own skill and sagacity; and, therefore, neither needs to communicate to the other. —*Lord Mansfield*, Carter *v.* Boehm (1765), 3 Burr. 1905.

   See FREEDOM OF SPEECH; LIBERTY OF THE PRESS; LIBERTY OF THE SUBJECT, 5; MINORITIES, 2; MISCELLANEOUS, 3, 40, 54; TRUTH, 13.

Poor.

1. Who sees not, that whosoever ministers to the poor, ministers to God? as it appears in that solemn sentence of the last day, Inasmuch as you did feed, clothe, lodge the poor, you did it unto me.—*Hobart*, C.J., Pits *v.* James (1614), Lord Hobart's Rep. 125.

2. It is not true (what some people imagine) "that the common law of England made no provision for the poor": the *Mirror* shews the contrary. How, indeed, it was done does not appear.—*Foster*, J., Rex *v.* Loxdale (1758), 1 Burr. Part IV. 450.

   See COMMON LAW, 12.

3. Though in a state of society some must have greater luxuries and comforts than others, yet all should have the necessaries of life; and if the poor cannot exist, in vain may the rich look for happiness or prosperity. The legislature is never so well employed as when they look to the interests of those who are at a distance from them in the ranks of society. It is their duty to do so: religion calls for it; humanity calls for it; and if there are hearts who are not awake to

Poor—*continued.*

either of those feelings, their own interests would dictate it.—*Lord Kenyon*, Rex *v.* Rusby (1800), Peake's N. P. Cases 192.

See JUDGES, 27, 81, *n.*; JUSTICE, 3; LAW, 19, 31; MISCELLANEOUS, 9; PROTECTION, 2; RELIGION, 1; TORT, 6.

Possession.

1. A man has not possession of that of the existence of which he is unaware.—*Cave*, J., The Queen *v.* Ashwell (1885), L. R. 16 Q. B. 201.

   See PROPERTY, 5.

2. Possession is very strong; rather more than nine points of the law.—*Lord Mansfield*, Corporation of Kingston-upon-Hull *v.* Horner (1774), Lofft. 591.

   See PRESUMPTION, 8.

3. Nothing but what has visible substance, is capable of actual possession.—*Yates*, J., Millar *v.* Taylor (1769), 4 Burr. Part IV. 2384.

Practice.

1. Matters of Practice are not to be known from books. What passes at a Judge's chambers is matter of *tradition:* It rests in *memory.* In cases of this kind, Judges must inquire of their officers. This is done in Court, every day, when the practice is disputed or doubted. It is in its nature, official. The officers are better acquainted with it, than the Judges. For my own part, neither my education, nor my walk in life before I came into this Court, ever led me into any knowledge of the practice of orders made by Judges in the vacation.—*Lord Mansfield*, Rex *v.* Wilkes (1769), 4 Burr. Part IV. 2366; *id.* 19 How. St. Tr. 1117.

   See 3, 7, 9, 33, *below;* FOREIGN LAW, 3, 4; JUDGES, 21; LAW, 14, 29.

2. We have here our own experience, and the report of our officer, a person of considerable experience, to guide us to the practice[1]; and the practice of the Court is the law of the Court.[2]—*Crampton*, J., Queen *v.* O'Connell and others (1843), 1 Cox, C. C. 392; 5 St. Tr. (N. S.) 61.

   See 11, *below;* COURTS, 13; NEW TRIAL, 3; PRECEDENTS, 10.

[1] "Upon the motion I doubted, but my clerk has since reminded me that upon application I have made twenty such orders."—*Lord Mansfield*, Workman *v.* Leake (1774), 1 Cowp. 22. "We have consulted the officers of the Crown Office, and we find that the practice is perfectly settled."—*Wright*, J., Aspinall *v.* Sutton (1894), L. R. 2 Q. B. D. [1894], p 350.

[2] "The practice of the Court forms the law of the Court."—*Per Lord Kenyon*, C.J., Wilson *v.* Rastall (1792), 4 T. R. 757. *Cursus Curiæ est lex Curiæ:* The practice of the Court is the law of the Court.—3 *Bulst.* 53. It was a common expression of the late Chief Justice Tindal, that the course of the Court is the practice of the Court.—See *per Creswell*, J., Freeman *v.* Tranah (1852), 12 C. B. 414.

Practice—*continued.*

3. A Judge in chambers exercises an equity—not a capricious equity, but all the equities which might be exercised either at law or in equity in the days when the two were distinct. But he has much more machinery for exercising his discretion than either a Court of Chancery or a Court in banc would have had; and consequently it has always—at least for some years past—been considered that a great many things could be worked out in chambers, which probably no Court would have done, or which, if the Court of Chancery had done, it would have done at an enormous expense by affidavits and otherwise.—*Lord Blackburn*, Wallingford *v.* Mutual Society (1880), L. R. 5 App. Ca. 707.

See 1, *above;* 7, *below;* Discretion, 7; Equity, 7, 19; Judges, 21.

4. I do not think that a Judge would wish any statement which he may have made in the course of a case, merely *obiter* and casually, to be treated as necessarily being an authority on the subject in question; but when a Judge has thought it necessary for the purpose of a case to make a deliberate examination of the practice of his Court, and to state such practice, I do not think the authority of such statement can be got rid of merely by arguing that it was not really necessary for the actual decision of the case. I think that such a statement if cited as an authority is entitled to great weight, though of course not binding on us as a decision.—*Lord Esher*, M.R., *Ex parte* Rev. James Bell Cox (1887), L. R. 20 Q. B. D. 19.

See Common Law, 4; Dictum, 1, 4; Evidence, 6; Judges, 11, 69; Precedents, 8.

5. I yield to authority. I think the practice of the Court of Chancery for more than one hundred years, and the authority of Judges of very great eminence, establish such a course of practice and such a chain of authority, that I do not think I am at liberty to assume that either the Court or those very learned Judges were in error as to their powers and jurisdiction.—*Lord Halsbury*, L.C., Attorney-General *v.* Marquess of Ailesbury (1887), L. J. (N. S.) 57 Q. B. 89.

See 12, 19, *below;* Cases, 21; Chancery, 13; Doctrine, 1; Law, 73; Precedents, 16.

6. To my mind when a great Judge, a master of the whole subject, thinking it necessary for the decision of the case to carefully examine into and to state the practice, it is nothing to say as against that, that it was not necessary for the decision.—*Lord Esher*, M.R., *Ex parte* Bell Cox (1887), 57 L. J. (N. S.) Q. B. 103.

See Administration of Justice, 7, 9; Judges, 70.

Practice—*continued.*

7. The business done at chambers is the most irksome part of the office of a Judge: but it is greatly for the benefit of the subject, and tends to the advancement and expedition of justice. It arises from the overflowing of the business of the Court, which cannot be all transacted in Court. The order of a Judge is subject to an appeal to the Court: but if acquiesced under, it is as valid as any act of the Court. —*Lord Mansfield*, Case of John Wilkes (1763), 19 How. St. Tr. 1121.

See 1, 3, *above*; 30, *below*; JUDGES, 21; RIGHTS, 3.

8. Every Court has the power to vary its own orders which are drawn up mechanically in the registry or in the office of the Court—to vary them in such a way as to carry out its own meaning, and where language has been used which is doubtful, to make it plain. I think that power is inherent in every Court. Speaking of the Courts with which I have been more familiar all my life, the Common Law Courts, I have no doubt that that can be done, and I should have no doubt that it could also be done by the Court of Chancery.—*Lord Penzance*, Lawrie *v.* Lees (1881), L. R. 7 Ap. Ca. 35.

See 31, 32 *below.*

9. I should regard it as certainly a novelty in our jurisprudence if the regular order of a learned Judge could be affected, or qualified, or altered in the slightest degree by what some subordinate officer of the Court thought proper to say in writing about it, even though in so doing he committed this additional irregularity—that to that private correspondence he affixed the seal of the Court.—*Lord Halsbury*, L.C., Stonor *v.* Fowle (1887), L. R. 13 Ap. Ca. 27.

See below, 29; CRIMINAL JUSTICE, 50; PUBLIC SERVANT, 10; RIGHTS, 3.

10. The consolidating of several actions into one is certainly of very great public utility.[1]—*Lord Mansfield*, Coote *v.* Thackeray (1773), Lofft. 152.

See LITIGATION, 2.

1 The statement of Lord Mansfield is obvious. If a person was allowed to bring two or more actions against another for causes which might have been joined, on its being shown to the Court that the double or plural proceeding is vexatious or oppressive, the Court will consolidate them: that power has always laid in its ordinary and *de cursu* jurisdiction to prevent abuse of its own powers. Also when two or more actions are brought by the same plaintiff against different defendants but the questions in dispute are the same, the Court will on the application of the defendants stay proceedings in all the cases but one. This kind of consolidation can only be obtained at the instance of defendants, yet a somewhat analogous proceeding has been adopted in the converse case. Where a number of plaintiffs have commenced actions against the same defendants on the application of the plaintiffs, the Court may enlarge the time for taking the next step in the rest of the

Practice—*continued.*

11. The constant and established proceedings of this Court are upon written evidence, like the proceedings upon the civil or canon law. This is the course of the Court, and the course of the Court is the law of the Court.—*Hardwicke*, L.C., Graves *v.* Budgel (1737), West, Ch. Rep. 45.

See 2, *above, and references therefrom; also* AFFIDAVIT, 1.

12. I think it is the safest course to stand by the established practice which has prevailed for a long period of time in this country than to indulge in the introduction of a novelty which might be highly dangerous.—*Crampton*, J., Queen *v.* O'Connell and others (1843), 1 Cox, C. C. 392.

See 5, *above;* 13, *below;* JUDGES, 68; JUDICIAL DECISIONS, 5; TORT, 1.

13. It is much better to adhere to what has been the practice in the chambers of both divisions of the Court than that a single Judge should attempt to set up what he considers a better practice.—*Stirling*, J., Liverpool and Manchester Aërated Bread Co. *v.* Firth (1890), L. J. 60 C. D. 154.

See 12, *above.*

14. It is the duty of the Court to repress sharp practice.—*Bacon*, V.-C., *In re* Swire; Mellor *v.* Swire (1882) L. R. 21 C. D. 649.

15. It is proper to inquire into the practice and precedents; and to see whether they have been uniform and concomitant.—*Yates*, J., Rex *v.* Wilkes (1769), 4 Burr. Part IV. 2548.

16. 'Tis pity that the two Courts should differ in their practice upon an Act of Parliament.[1]—*Lord Mansfield*, Belither *v.* Gibbs (1766), 4 Burr. Part IV. 2117.

17. In a case where there is not practice to support us, where we have not strong lights to guide us, and analogies so complete and satisfactory as not to admit of being mistaken, I cannot but think it the safest course for us to decline doing now, what it does not appear that this Court has ever done before.—*Eyre*, C.J., Jefferson *v.* Bishop of Durham (1797), 2 Bos. and Pull. 128.

See ADMINISTRATION OF JUSTICE, 33; JUDGES, 66.

actions until one of them has been tried as a test action, or as just stated, it may on the application of the defendants, as was the former practice, consolidate them. —*Amos* v. *Chadwick* (1877), L. R. 4 C. D. 869. The advantage of consolidation is very clear. It prevents several suits for the same matter, thus entailing waste of public time, and also when a person by an act of his, has given rise to a right of action against him by a number of other persons, if successive actions were allowed, it might become uselessly unfair and oppressive to him. In the case of *Amos* v. *Chadwick*, previously herein quoted, there were 78 plaintiffs.

[1] "Lord Mansfield, said there should be a uniformity between the two Courts. And he recommended it to Mr. Justice Aston, to take a note of this matter, and

Practice—*continued.*

18. I have no authority to alter the practice of the Court.—*Lord Langdale*, M.R., Balls *v.* Margrave (1841), 3 Beav. 449.

19. I will not, without any authority, suffer the constant practice of this Court for thirty years to be broke through.[1]—*Lord Mansfield*, Cases adjudged in the Court of King's Bench (1773), Hilary Term, 13 Geo. III., Lofft. 155.

See above, 5; PRECEDENTS, 8, 17.

20. I do not think I can pass over the distinct words of Sir George Jessel, who knew practice as thoroughly as any Judge who ever sat on the bench.—*Kekewich*, J., Woolf *v.* Woolf (1898), L. R. 1 C. D. 347.

21. Practice does not make the slip of a Judge irrevocable.—*Kekewich*, J., Collins *v.* North British and Mercantile Ins. Co. (1894), L. R. 3 Ch. [1894], p. 235.

See JUDGES, 60.

22. No man is entitled, as of right, to add to the evidence on a motion, after electing deliberately to open it.—*Sir G. Jessel*, M.R., Jacobs *v.* Brett (1875), L. R. 20 Eq. Ca. 5.

See COUNSEL, 10, 11, 12; OPENING SPEECH, 2; RIGHTS, 3.

23. Nothing is more apt to mislead than the suggestion of a supposed general practice, unsupported by any authority or decision.—*Lord Mansfield*, Reynolds *v.* Beering (1784), 3 Doug. 189.

See COUNSEL, 10, 13.

24. Every rule may be waived by the person for whose benefit it is introduced.—*Ashhurst*, J., Bickerdike *v.* Bollman (1787), 1 T. R. 405.

See CONSENT, 3; RIGHTS, 3.

25. My opinion is, that all general rules, touching the administration of justice, must be so understood, as to be made consistent with the fundamental principles of justice: And consequently all cases where a strict adherence to the rule would clash with those fundamental principles, are to be considered as so many exceptions to it.—*Sir M. Foster*, J., Sir John Wedderburn's Case (1746), Foster's Cr. Ca. 38.

ee ADMINISTRATION OF JUSTICE, 6.

26. General rules are widely established for attaining justice with ease, certainty and dispatch. But the great end of them being "*to do justice*," the Court ought to see that it be really attained.—*Lord Mansfield*, Rex *v.* Phillips (1756), 1 Burr. Part IV. 301.

See ADMINISTRATION OF JUSTICE, 19.

talk with the Judges of *C. B.* about it."—*Id.* 2118.

[1] We are not absolutely bound to do it without some reason to excuse the going out of the regular course.—*Lord Mansfield*, Rex *v.* Wilkes (1770), 4 Burr. Part IV., p. 2531.

Practice—*continued.*

27. The Court must not depart from those rules which have been considered necessary for the due administration of justice.—*Lord Langdale*, M.R., Symonds *v.* The Gas Light and Coke Co. (1848), 11 Beav. 285.

28. To be sure the Court regularly adheres to regular judgments, if in support of the merits and justice; but if against the merits and justice they always get rid of the mere formality of them.—*Lord Mansfield*, Lord Mexborough *v.* Sir John Delaval (1774), Lofft. 310.

See PRECEDENTS, 15.

29. Nothing imports us more, than to see the judgments of the Court be *duly* executed.—*Lord Mansfield*, Rex *v.* Beardmore (1759), 2 Burr. Part IV. 795.

See 9, *above, and references therefrom.*

30. One great object of the *Judicature Act* would be defeated if, when a Judge says, "I remember what took place before me when the judgment was pronounced, and I am quite certain it was not intended to prejudice the defendant on this point," we were to say that the judgment which is quite capable of this construction is nevertheless to be construed otherwise. The scheme of the *Judicature Act* was that the Judge who had pronounced a judgment should have the carrying out of that judgment because he was more likely to understand it than another Judge who had not pronounced it.—*Kay*, L.J., Steers *v.* Rogers (1892), L. R. 2 C. D. [1892], p. 25.

See 7, *above, and references therefrom.*

31. An Order *confirmed* binds all the world: But when *discharged*, it is binding only between the parties concerned.—*Page*, J., Rex *v.* Inhabitants of Cirencester (1734), Burrow (Settlement Cases), 18.

See 8, *above, and* 32, *below.*

32. If we go into *presumptions* upon special Orders, it will make them very uncertain.—*Lord Hardwicke*, Rex *v.* Inhabitants of Barton Turfe (1735), Burrow (Settlement Cases), 53.

See 31, *above;* PRESUMPTION, 1.

33. The discretion of an experienced taxing master ought not lightly to be interfered with.—*Cozens-Hardy*, J., *In re* Maddock; Butt *v.* Wright (1899), L. R. 2 C. D. 591.

See 1, *above.*

Precedents.

1. It is of dangerous consequence for Judges, in their judgments, to rely too much on precedents that perhaps went forth through the

Precedents—*continued.*

necessity of the present times.[1]—*Brampston*, L.C.J., Hampden's Case (1637), 3 How. St. Tr. 1245.

See JUDICIAL DECISIONS, 3, 11; LAW, 73; LAW REPORTS, 3.

2. I cannot bear to be told when an argument has been addressed to me by which I am not convinced, that there is a case decided which I am bound to follow.—*Kay*, J., *In re* Holmes (1890), L. J. (N. S.) 60 C. D. 269.

See below, 18; JUDICIAL DECISIONS, 5, 6.

3. My duty is, as a Judge, to be governed by fixed rules and former precedents.—*Alderson*, B., Brownlow *v.* Egerton (1854), 23 L. J. Rep. Part 5 (N. S.), Ch. 364.

See JUDICIAL DECISIONS, 10.

4. He who will have advantage of precedents, ought to search for them at his peril, and for his speed, for, the Court will not search for them; for if none, or no usual precedents are shewn, the Court ought to adjudge according to law and reason.—*Lord Coke*, Slade's Case (1602), 4 Rep. 94 a.

See 12, *n.*, *below*; EQUITY, 3, *n.*; LAW, 17.

5. If any precedent should be found, you should have time to make use of it.—*Lord Mansfield*, King *against* Skinner (1772), Lofft. 57.

See 12, *below*.

6. It is dangerous to make a precedent, an innovation.[2]—*Pratt*, C.J., Layer's Case (1722), 16 How. St. Tr. 132.

7. It is hard, I confess, and so are many other things in the law; but I am wonderfully tender of making precedents.—*Jefferies*, L.C.J., Rosewell's Case (1684), 10 How. St. Tr. 267.

See JUDICIAL DECISIONS, 17; LAW, 39.

8. A course of precedents and judicial proceedings in Courts of justice make the law: it would be endless to cite cases upon it. A course of practice for a few years has been held to controul an Act of Parliament.[3] —*Wilmot*, L.C.J., Wilkes' Case (1770), 19 How. St. Tr. 1130.

See CASES, 7, 9, 21; PRACTICE, 5; PRECEDENTS, 17.

[1] Hence we see so many old precedents upset and not followed on the ground that they do not apply to the exigencies of the present times.

[2] When Shylock, in the play, insists on having, by virtue of his bond, the pound of flesh lying nearest to his debtor's heart, the friend of the unfortunate merchant thus supplicates the Judge:—

"I beseech you,
Wrest once the law to your authority;
To do a great right, do a little wrong,
And curb this cruel devil of his will."

But what is the answer?—

"It must not be;
'Twill be recorded for a precedent,
And many an error by the same example
Will rush into the State."

[3] See *Case of Bewdley Corporation*, 1 P. Wms. 207.

Precedents—*continued.*

9. We must, as in all cases of tradition, trace backwards, and presume, from the usage which is remembered, that the precedent usage was the same.—*Earl of Mansfield*, Proceedings against the Dean of St. Asaph (1783), 21 How. St. Tr. 1036.

   See PRACTICE, 1.

10. From authorities I come to precedents; though they be not judgments, yet they show the practice of the law: and what better book have we in the law than the book of precedents, or what is there of more authority than that, for we have not the twelve tables for our common laws? The common law is but the common usage of the land.—*Finch*, L.C.J., Hampden's Case (1637), 3 How. St. Tr. 1227.

   See CASES, 10; COMMON LAW, 3, 9, 12; EQUITY, 18; JUDICIAL DECISIONS, 13; PRACTICE, 2, 11.

11. Recognised precedents have the force of decisions, by which Courts and Judges individually must hold themselves bound.—*Williams*, J., Case of the Sheriff of Middlesex (1840), 3 St. Tr. (N. S.) 1256.

   See CASES, 21; JUDICIAL DECISIONS, 7.

12. The precedents are all against you, every one of them, and what shall guide our judgments, since there is nothing alleged in this case but precedents?[1]—*Hyde*, C.J., Proceedings on *Habeas Corpus* by Sir T. Darnel and others (1627), 3 How. St. Tr. 57.

   See 5, *above*; COUNSEL, 3.

13. Matters depending in our Courts are composed of an infinite number of special circumstances, and it therefore is as rare to find a precise correspondence between the facts of one case and those of another, as an exact resemblance in the face of one man to that of another. Therefore it is the wisdom of the sages of our law, by the analogy with

[1] I hope we shall resolve according to the reason of former times, and according to our consciences.—*Hyde*, C.J., *id.*, p. 50. *See also* 4, *above*.

The value of precedents, and the importance of adhering to them, were deeply felt in ancient times, and nowhere more than in the Prætor's forum. "*Consuetudinis autem jus esse putatur id*" (says Cicero), "*quod, voluntate omnium, sine lege, vetustas comprobârit. In eâ autem jura sunt, quædam ipsa jam certa propter vetustatem; quo in genere et alia sunt multa, et eorum multo maxima pars, quæ Prætores edicere consuêrunt.*"* And the Pandects directly recognise the same doctrine. "*Est enim juris civilis species consuetudo; enimvero, diuturna consuetudo pro jure et lege, in his, quæ non ex scripto descendunt observari, solet, &c. Maxime autem probatur consuetudo ex rebus judicatis.*"†—1 *St. Eq. Jur.* 14.

* Cicero de Invent. Lib. 2, cap. 22; Mitford, Plead. in Eq., p. 44, note (*b*); Heineccius, De Edictis Prætorium, Lib. I, tit. 3, cap. 6, § 13, 30.

† Pothier, Pand. Lib. 1; tit. 3, Art. 6 n. 28, 29; Dig. Lib. 1, tit. 3, I. 33, I. 34.

Precedents—*continued.*

other cases, to investigate their doubts, and thus to satisfy their judgments.[1]—*Per Cur.*,[2] Manby *v.* Scott (1672), 1 Levinz, 4; 2 Sm. L. C. (8th ed.) 455.

See CASES, 7, 19; JUDICIAL DECISIONS, 17; LAW REPORTS, 3.

14. What is determined upon solemn argument establishes the law, and makes a precedent for future cases: which is not the case of questions agreed by consent of parties, or never litigated.—*Lord Mansfield*, Case of John Wilkes (1770), 19 How. St. Tr. 1095.

See 20, *below.*

15. I have often thought since that there is sound sense in what was once said by the late Lord C. J. Eyre, that the sooner a bad precedent was gotten rid of, the better.—*Lord Kenyon*, C.J., King *v.* Stone (1801), 1 East, 648 n. (*a*).

See CASES, 16; DOCTRINE, 2; JUDICIAL DECISIONS, 5, 6; LAW, 64, 74; LAW REPORTS, 3; PRACTICE, 28.

16. I lay great stress upon the two precedents of near a century and a half ago, and no instance in contradiction of them.—*Lord Mansfield*, Mayor of Norwich *v.* Berry (1766), 4 Burr. Part IV., p. 2114.

See CASES, 12, 21; DOCTRINE, 1; JUDICIAL DECISIONS, 5, 20, 25; PRACTICE, 5.

17. I think what has been considered as settled law for thirty years past ought not now to be departed from.—*Buller*, J., Doe *v.* Staple (1788), 2 T. R. 699.

See JUDICIAL DECISIONS, 17, 20; PRACTICE, 19.

18. Precedent indeed may serve to fix principles, which for certainty's sake are not suffered to be shaken, whatever might be the weight of the principle, independent of precedent. But precedent, though it be evidence of law, is not law in itself; much less the whole of the law. —*Lord Mansfield*, Jones *v.* Randall (1774), Lofft. 386.

See above, 2; CASES, 9, 15, 21; JUDICIAL DECISIONS, 9, 12; LAW, 53.

19. Precedent goes in support of justice.—*Lord Kenyon*, Smith *v.* Bowles (1797), 2 Esp. 578.

See JUDICIAL DECISIONS, 10, 24.

20. I should be sorry that any opinion of mine should shake the authority of an established precedent; since it is better for the subject that even faulty precedents should not be shaken than that the law

[1] Seldom will it happen that any one rule will exactly suit with many cases.—*Sir Wm. Blackstone* (1765), Com. Bk. III., Ch. 25, p. 335.

[2] *Mallet*, *Twisden* and *Terrill*, JJ.

Precedents—*continued.*

should be uncertain.—*Grose*, J., Heathcote *v.* Crookshanks (1787), 2 T. R. 24.

See 14, *above;* ADMINISTRATION OF JUSTICE, 2; CASES, 21; EQUITY, 19; JUDGES, 48, *n.*, 52; JUDICIAL DECISIONS, 5, 24; LAW, 54; LIBERTY OF THE PRESS, 3; MISCHIEF, 1; PLEADINGS, 4.

Presumption.

1. Presumption means nothing more than, as stated by Lord *Mansfield*, the weighing of probabilities, and deciding, by the powers of common sense, on which side the truth is.—*Best*, J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 114.

   See EVIDENCE, 12; PRACTICE, 32.

2. It is a strong presumption that that which never has been done cannot by law be done at all.—*Ashhurst*, J., Russell *v.* The Men of Devon (1788), 1 T. R. 673.

   See 3, *below;* LAW, 41, *and references therefrom.*

3. It is a familiar principle that all things are presumed to have been rightly done unless there is reasonable ground shown for doubting it. —*Sir James Hannen*, Woodhouse *v.* Balfour (1887), L. R. 13 Pr. D. 4.

   See 2, *above.*

4. When one or more things are proved, from which our experience enables us to ascertain that another, not proved, must have happened, we presume that it did happen, as well in criminal as in civil cases.—*Best*, J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 111.

5. It is certainly true, and I most ardently hope that it will ever continue to be the case, that by the law of England, as it was urged and admitted in the case of the Seven Bishops,[1] no man is to be convicted of any crime upon mere naked presumption.—*Holroyd*, J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 125.

6. No one can doubt that presumptions may be made in criminal as well as in civil cases. It is constantly the practice to act upon them, and I apprehend that more than one half of the persons convicted of crimes are convicted on presumptive evidence.—*Bayley*, J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 131.

7. I readily admit that the law which requires presumption or custom to be carried back for a period of nearly 700 years, is a bad and mischievous law, and one which is discreditable to us as a civilised and enlightened people, but such is the law; and while it so continues, I consider myself, in administering it, as bound to administer it as I

[1] See 12 How. St. Tr. 183.

Presumption—*continued.*

find it; nor do I feel myself warranted in undermining or frittering it away by subtle fictions or artificial presumptions inconsistent with truth and fact.—*Cockburn*, C.J., Bryant *v.* Foot (1867), 15 W. R. 425; *S. C.* L. R. 2 Q. B. Ca. 179.

See LAW, 20; USAGE, 8.

8. It follows almost necessarily, from the imperfection and irregularity of human nature, that a uniform course is not preserved during a long period: a little advance is made at one time, a retreat at another; something is added, or taken away, from indiscretion, or ignorance, or through other causes: and, when by the lapse of years the evidence is lost which would explain these irregularities, they are easily made the foundation of cavils against the legality of the whole practice. So also with regard to title: if that which has existed from time immemorial be scrutinised with the same severity which may properly be employed in canvassing a modern grant, without making allowance for the changes and accidents of time, no ancient title will be found free from objection: that, indeed, will become a source of weakness, which ought to give security and strength. It has therefore always been the well-established principle of our law to presume everything in favour of long possession.—*Littledale*, J., R. *v.* Archdall (1838), 8 A. & E. 288.

See POSSESSION, 2.

9. A presumption of any fact is, properly, an inferring of that fact from other facts that are known; it is an act of reasoning; and much of human knowledge on all subjects is derived from this source.—*Abbott*, C.J., King *v.* Burdett (1820), 1 St. Tr. (N. S.) 140.

10. *Primâ facie*, every estate, whether given by will or otherwise, is supposed to be beneficial to the party to whom it is so given.—*Abbott*, C.J., Townson *v.* Tickell (1820), 3 B. & A. 36.

11. If a man go into the *London Docks* sober without means of getting drunk, and comes out of one of the cellars very drunk wherein are a million gallons of wine, I think that would be reasonable evidence that he had stolen some of the wine in that cellar, though you could not prove that any wine was stolen, or any wine was missed.—*Maule*, J., Reg. *v.* Burton (1854), Dearsly's C. C. 284.

12. There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so.—*Maule*, J., Martindale *v.* Falkner (1846), 2 C. B. 720, and characterised by *Blackburn*, J., in The Queen *v.* Mayor of Tewkesbury, L. R. 3 Q. B. 629.

See JUDGES, 77; LAW, 14.

Privilege.

Once privileged always privileged.[1]—*Cockburn*, J., Bullock *v.* Corry (1878), 3 Q. B. D. 356.

See also RIGHTS, 4, *supra*.

Privy Council.

It is true that the decisions of the Privy Council are not theoretically binding on this Court; but in case of mercantile or admiralty law, where the same principles are professedly followed in the colonies and in this country, it is, to say the least, highly undesirable that there should be any conflict between the decisions of the Judicial Committee and those of the High Court or Courts of Appeal in this country.—*Lindley*, L.J., "The City of Chester" (1884), L. R. 9 Pro. Div. 207. See also *per Sir James W. Colville*, in Pitts *v.* La Fontaine (1880), L. R. 6 App. Cas. 483.

See APPEALS, 4, 6; CASES, 21; JUDGES, 14, 48, *n.*, 56, *n.*; PARLIAMENT, 18, 19.

Process.

1. We are not to issue process here as instruments or conduit-pipes, but judicially as Judges: and it will not be an objection to say, that we may award process at all hazards, and let the party grieved come after and plead to it; for we shall never grant an ill-writ, that the party may avoid it in pleading.—*Holt*, C.J., Lucy *v.* Bishop of St. David's (1702), 7 Mod. 59.

   See PLEADINGS, 6, 9, 10.

2. There is no manner of doubt, but that a man may make use of legal process (legal in the ordinary course of proceeding) in such a manner as shall be a contempt to the Court, and a most grievous oppression.—*Lord Mansfield*, Anonymous (1773), Lofft. 328.

   See CORPORATIONS, 1; COURTS, 2; CRIMINAL JUSTICE, 41, 45; LAW, 75; LIBERTY OF THE SUBJECT, 4; RELIEF, 3.

Property.

1. A thing which is not *in esse* but in apparent expectancy is regarded in law.—*Lord Coke*, Case of Sutton's Hospital (1612), 5 Rep. 303.
2. The power to regulate the disposal of property after death ought not to extend to doing it in a manner tending to the prejudice of the living.—*Lord Truro*, Brownlow *v.* Egerton (1854), 23 L. J. Rep. Part 5 (N. S.), Ch. 403.

   See WILL, 5, 13.

[1] See *per Brett*, M.R., Pearce *v.* Foster (1885), 15 Q. B. D. 119.

Property—*continued.*

3. The Court has of late years been much more ready to decide questions as to interests *in futuro* than it formerly was.—*Kekewich*, J., *In re* Freme's Contract (1895), L. R. 2 C. D. [1895], p. 262.
4. Rules of property ought to be generally known, and not to be left upon loose notes, which rather serve to confound principles, than to confirm them.—*Lord Mansfield*, Goodtitle *v.* Duke of Chandos (1760), 2 Burr. Part IV., p. 1076.
5. Entry is not equivalent to possession.—*Fry*, J., Edwick *v.* Hawkes (1881), L. R. 18 C. D. 203.

   See POSSESSION, 1.
6. The law is so benignant in this country that it sometimes contradicts itself in order to preserve estates.—*Lord St. Leonards*, Brownlow *v.* Egerton (1854), 23 L. J. Rep. Part 5 (N. S.), Ch. 407.

   See HUSBAND AND WIFE, 7; PUBLIC POLICY, 5.
7. We must not be frighted when a matter of property comes before us by saying it belongs to the Parliament; we must exert the Queen's jurisdiction.—*Holt*, C.J., Ashby *v.* White (1703), Lord Raym. 938.

   See JUDGES, 19, 20, 29, 37; LAW, 59; TORT, 8.
8. Personal property has no locality.[1]—*Lord Loughborough*, Sill *v.* Worswick (1791), 1 H. Bl. 690.
9. Monuments are memorials of great use in questions of descent, and in matters of family interest; decency and propriety likewise require that they should not remain in a state of ruin and decay.—*Sir Wm. Scott*, Bardin *v.* Calcott (1789), 1 Hagg. Con. Rep. 16.
10. There is nothing illegal in keeping up a tomb; on the contrary, it is a very laudable thing to do.—*Lindley*, L.J., *In re* Tyler, Tyler *v.* Tyler (1891), L. R. 3 C. D. [1891], p. 258.
11. I am afraid that the state of some other noble monuments of the finest Gothic architecture in this kingdom is not very consoling; that they are mouldering and crumbling into ruins. I have heard it observed with grave and serious regret, that no funds have been appropriated for the preservation of them: perhaps a time will come when that which I take to be an error will be corrected, and when it will be found that all the property of the Church is a fund for the

[1] The meaning of that is, not that personal property has no visible locality, but that it is subject to that law which governs the person of the owner. With respect to the disposition of it, with respect to the transmission of it, either by succession or the act of the party, it follows the law of the person. The owner in any country may dispose of personal property. If he dies, it is not the law of the country in which the property is, but the law of the country of which he was a subject, that will regulate the succession. —*Id.*

Property—*continued.*

sustentation of those fabrics.—*Eyre*, C.J., Jefferson *v.* Bishop of Durham (1797), 2 Bos. & Pull. 129.

12. If a man will make a purchase of a chance, he must abide by the consequences.—*Richards*, L.C.B., Hitchcock *v.* Giddings (1817), 4 Price, 135.

See COMMERCE, 12; FRAUD, 29; JURY, 8; MISCELLANEOUS, 33; MONEY, 2; PLEADINGS, 5; RELIEF, 1; TITLE, 4; TORT, 16; WORDS, 8.

13. I may use mine own as I will.—*Hobart*, C.J., Robins *v.* Barnes (1614),Lord Hobart's Rep. 131.

See TORT, 4, 14, 18; TRESPASS, 1.

14. I know of no case in which you are to have a judicial proceeding, by which a man is to be deprived of any part of his property, without his having an opportunity of being heard.—*Bayley*, B., Capel *v.* Child (1832), 2 C. & J. 579.

See ADMINISTRATION OF JUSTICE, 5; CRIMINAL JUSTICE, 18; EVIDENCE, 21; PLEADINGS, 7.

Prosecution.

Those who make the attack ought to be very well prepared to support it.—*Rooke*, J., Almgill *v.* Pierson (1797), 2 Bos. & Pull. 104.

See DOCTRINE, 3; EQUITY, 26; MISCELLANEOUS, 48; PARLIAMENT, 9; PLEADINGS, 6; RELIEF, 3; TORT, 2, 9.

Protection.

1. A man wants no protection when his conduct is strictly right.—*Lord Mansfield*, Bird *v.* Gunston (1785), 3 Doug. 275.

See LIBERTY OF THE SUBJECT, 4; MISCELLANEOUS, 10; REASONABLE, 3.

2. To protect those who are not able to protect themselves is a duty which every one owes to society.—*Lord Macnaghten*, Jenoure *v.* Delmege (1890), 60 L. J. Rep. (N. S.) Q. B. 13.

See FRAUD, 19; HUSBAND AND WIFE, 5; JUDGES, 27, 81, *n.*; JUSTICE, 3; LAW, 31; LIBERTY OF THE PRESS, 3; MISCELLANEOUS, 9, 21, 33; POOR, 3; TITLE, 4; TORT, 6, 16.

Public Policy.

1. It is impossible to say what the opinion of a man or a Judge might be as to what public policy is.—*Jessel*, M.R., Besant *v.* Wood (1879), L. R. 12 C. D. 620.

2. Public policy is a very unruly horse, and when once you get astride

Public Policy—*continued.*

it you never know where it will carry you.[1]—*Burrough*, J., Richardson *v.* Mellish (1824), 2 Bing. 252.

See LAW, 54.

3. Public policy is a high horse to mount, and is difficult to ride when you have mounted it.—*A. L. Smith*, M.R., The Driefontein Consolidated Mines, Ltd. *v.* Janson (1901), Times L. R., Vol. XVII., 605.

4. Public policy does not admit of definition and is not easily explained. It is a variable quantity; it must vary and does vary with the habits, capacities, and opportunities of the public.[2]—*Kekewich*, J., Davies *v.* Davies (1887), L. R. 36 C. D. 364.

5. The great end, for which men enter into society, was to preserve their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole. . . . Distresses, executions, forfeitures, taxes, &c., are all of this description; wherein every man, by common consent gives up that right, for the sake of justice and general good.—*Lord Camden*, Entick *v.* Carrington (1765), 19 How. St. Tr. 1066.

See HUSBAND AND WIFE, 7; PROPERTY, 6.

6. There are many cases in which individuals sustain an injury, for which the law gives no action; for instance, pulling down houses, or raising bulwarks for the preservation and defence of the kingdom against the King's enemies.—*Buller*, J., Governor, &c. of Cast Plate Manufacturers *v.* Meredith (1792), 4 T. R. 797.

See SOVEREIGNTY, 12.

7. The principle of public policy is this: *ex dolo malo non oritur actio.* No Court will lend its aid to a man who founds his cause of action upon an immoral or illegal act.—*Lord Mansfield*, Holman *v.* Johnson (1775), Cowp. 343.

See ADMINISTRATION OF JUSTICE, 18; CRIMINAL JUSTICE, 51; FRAUD, 33; JUDICIAL PROCEEDINGS, 9; JURY, 8; LAW, 74; MISCELLANEOUS, 31; MORALS, 3; RELIEF, 2.

8. The argument of public policy leads you from sound law, and is never argued but when all other points fail.—*Burrough*, J., Richardson *v.* Mellish (1824), 2 Bing. 252.

See JUDGES, 64; JUDICIAL DECISIONS, 21.

9. Whatever is injurious to the interests of the public is void, on the

[1] Quoted by *Lord Bramwell* in Mogul Steamship Co. *v.* McGregor, Gow and others, 66 L. T. Rep. 6.

[2] See also Egerton *v.* Earl Brownlow, 4 H. L. C. 1.

Public Policy—*continued.*

grounds of public policy.—*Tindal*, C.J., Horner *v.* Graves (1831), 7 Bing. 743.

See JUDGES, 61; JUSTICE, 1; PLEADINGS, 3; TORT, 19, 23, 24.

Public Servant.

1. We are not to assume that public officers will do anything unjust or tyrannical.—*Willes*, J., Bocking *v.* Jones (1870), L. R. 6 Com. Pl. Ca. 35.

   See 10, *below;* PARLIAMENT, 8, 11.

2. A servant of the Crown ought not to be placed at a disadvantage in comparison with other subjects.—*Field*, J., Hennessy *v.* Wright (1888), L. R. 21 Q. B. D. 513.

3. If public officers will infringe men's rights, they ought to pay greater damages than other men, to deter and hinder other officers from the like offences.—*Holt*, C.J., Ashby *v.* White (1703), 2 Raym. 956.

   See DAMAGES, 2; TRESPASS, 2, *n.*

4. We are bound to assume that the Crown in the exercise of its grace and favour, will be guided solely by constitutional considerations, by regard to merit, loyalty, and public services.—*Coleridge*, J., Brownlow *v.* Egerton (1854), 23 L. J. Rep. (N. S.) Eq. 372.

   See HONOURS; PEERAGE, 1.

5. If the confidential communications made by servants of the Crown to each other, by superiors to inferiors, or by inferiors to superiors, in the discharge of their duty to the Crown, were liable to be made public in a Court of justice at the instance of any suitor who thought proper to say "*fiat justitia ruat cœlum*," an order for discovery might involve the country in a war.[1]—*Field*, J., Hennessy *v.* Wright (1888), L. R. 21 Q. B. D. 512.

   See POLITICS, 4.

6. It is the principle of the common law, that an officer ought not to take money for doing his duty.—*Wilmot*, J., Stotesbury *v.* Smith (1759), 2 Burr. Part IV., p. 928.

   See PARDON, 4, *and references therefrom.*

7. It is proved that in passing . . . accounts, the accountant took his fees, while others did the business, which I fear is too often the case of public officers.—*Lord Mansfield*, R. *v.* Bembridge (1783), 22 How. St. Tr. 152.

   See AUDITOR.

[1] This was an action for libel by a Colonial Governor against *The Times* for publishing articles alleging that members of the Council of Government of Mauritius

Public Servant—*continued.*

8. It is a disparagement of the Government, who put an ill man into office.—*Holt*, C.J., Regina *v.* Langley (1703), 2 Raym. 1029.

   See ADMINISTRATION OF JUSTICE, 35.

9. If a man accepts an office of trust and confidence, concerning the public, especially when it is attended with profit, he is answerable to the King for his execution of that office.—*Lord Mansfield*, R. *v.* Bembridge (1783), 22 How. St. Tr. 155.

10. The Crown cannot ever be prejudiced by the misconduct or negligence of any of its officers.—*Pollock*, C.B., Reg. *v.* Renton (1848), 2 Exch. Rep. 220.

    See 1, *above;* CRIMINAL JUSTICE, 50; PARLIAMENT, 11; PRACTICE, 9.

11. Men of honour will do their duty and will abide the consequences. —*Eyre*, B., Sutton *v.* Johnstone (1786), 1 T. R. 504.

Punishment.

1. I have heard that it was the perfection of the administration of criminal justice to take care that the punishment should come to few and the example to many.[1]—*Lord Kenyon*, Eaton's Case (1793), 22 How. St. Tr. 820.

   See below, 4, 6; CRIMINAL JUSTICE, 3, 30; JUDGES, 13.

2. Punishment is intended for example; but a person insane can have no design; and to punish him can be no example.[2]—*Lord Swinton*, Kinloch's Case (1795), 25 How. St. Tr. 1001.

   See INSANITY, 2.

3. It is a duty not only to punish, but to prevent all manner of evil.[3]—*Lord Swinton*, Kinloch's Case (1795), 25 How. St. Tr. 1001.

   See DAMAGES, 1; PARDON, 2.

had charged him with sending to the Colonial Office garbled reports of their speeches.

[1] No doubt punishments should be exemplary and deterrent. But a ceremony of public degradation such as took place in France in the Dreyfus case, seems to be opposed to the spirit of the times, which is averse to inflicting needless pain to the criminal. In England we have abolished not merely public executions, but the pillory and the stocks, and all forms of punishment by which the criminal was exposed to the insults and contumelies of the crowd; and not very long ago a merciful and humane order was made which exempted convict witnesses from being required to give evidence in their prison dress.

[2] *Furiosus absentis loco est. Non multum distant a brutis qui ratione carent:* A madman is like a man who is absent. Those who want reason are not far removed from brutes.—4 *Co.* 126.

Furiosus solo furore punitur: Let a madman be punished by his madness alone.—*Co. Litt.* 247.

"The execution of an offender is by way of example, *ut pœna ad paucos, metus ad omnes perveniat*" (*Co.* 3 *Inst.* 6): but so it is not when a madman is executed: but should be a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be of no example to others.—*Steph. Com.* Vol. IV. (8th ed.), Bk. VI., c. ii, 27.

[3] *Multiplicatâ trangressione crescat*

Punishment—*continued.*

4. The wishes of every human man are, that guilt may not be fixed upon any man; but I confess I am one of those who have not the weakness—which weakness, a Judge at least, and a jury, must get rid of, before they fit themselves to fill the respective stations which they are to fill in the administration of the justice of the country—I say, therefore, I am not one of those who wish under false compassion, inconsistent with the administration of criminal justice, that a person on whom guilt is fairly fixed, should escape the punishment which the law annexes to his guilt.—*Lord Kenyon*, Stone's Case (1796), 25 How. St. Tr. 1423.

See above, 1; *below*, 6; CRIMINAL JUSTICE, 2, 30; PARDON, 1, 2.

5. In dispensing the criminal justice of the country, we have sometimes an arduous task to perform. It is not a pleasant thing, most certainly, to condemn any one of our fellow creatures to punishment; but those who are entrusted with the administration of the criminal justice of a country, must summon up their fortitude, and render justice to the public, as well as justice tempered with mercy to the individual.[1]—*Lord Kenyon*, Trial of the Earl of Thanet, and others (1799), 27 How. St. Tr. 939.

See ADMINISTRATION OF JUSTICE, 32; CRIMINAL JUSTICE, 25, 26; LAW, 48; TRIAL FOR LIFE, 1.

6. . . . —a Court where neither favour nor interest can protect you; but where punishment will be impartially inflicted, according to every man's demerit . . . examples become necessary, *pro salute reipublicæ*. It is not in the power of this supreme Court of criminal jurisdiction, considering the venality of the times, to cleanse the Augean stable,[2] and therefore our only consolation must be "*est aliquod prodire tenus*

pœnæ inflictis: Let infliction of punishment increase with multiplied crime.—2 *Inst.* 479. *See also* PUNISHMENT, 10, *suprà*.

Pœne potius molliendæ quam exasperandæ sunt: Punishments should rather be softened than aggravated.—3 *Inst.* 220.

Melior est justitia verè præveniens, quam severè puniens: Justice truly preventing is better than severely punishing. —3 *Inst. Epil.*

Præstat cautela quam medela: Caution is better than cure.—*Co. Litt.* 304. *See also antè*, JUDGES, 16.

Prevention is better than cure.—*Pr.*

[1] I shall temper so justice with mercy. —*Milton*, "Paradise Lost," Bk. 10, line 77.

Mercy seasons justice.—*Shaks.*, "Merchant of Venice," Act IV., sc. i.

The beautiful lines in the same play:

"The quality of mercy is not strained;
It droppeth like the gentle dew from Heaven,"

are but an echo of Ecclus. xxxv., 20.

[2] The *Augean* stable, in Grecian mythology, is represented as belonging to Augeas or Augias, one of the Argonauts, and afterwards King of Elis. This prince kept a great number of oxen in a stable which was never cleansed, until Hercules undertook the task; a task which it seemed impracticable to execute. Hence the *Augean stable* came to represent what is deemed impracticable, or a place which has not, for a long time been cleansed.—*Lempriere*, Webs. Dict.

Punishment—*continued.*

si non datur ultra."—*Willes*, J., R. *v.* Bembridge (1783), 22 How. St. Tr. 157.

See 1, 4, *above;* JUDGES, 19, *n.*, 20, 27, 37, 74; JUSTICE, 3; LAW, 19; RIGHTS, 4; TORT, 6.

7. No legal punishment is inflicted for revenge; all are for correction of the individual delinquent or others. All are *pro salute animarum.*—*Brett*, L.J., Martin *v.* Mackonochie (1879), L. R. 4 Q. B. 753.

See LAW, 59.

8. A power to imprison does not give a power to fine. I cannot accede to the proposition that in England in penal jurisdiction the admitted power to award a particular punishment involves the power of awarding every lesser punishment.—*Brett*, L.J., Martin *v.* Mackonochie (1879), L. R. 4 Q. B. D. 754.

See LAW, 59.

9. A learned county court judge told me that at first he used to make orders of committal for a short time and he found that the people went to prison. He then lengthened the period, and he found that fewer people went to prison; and he found that the longer the period for which he committed people to prison for not paying, the shorter was the total amount of imprisonment suffered by debtors, because when they were committed for the whole six weeks they moved heaven and earth among their friends to get the funds and pay; whereas if the term was a short one, they underwent the punishment.[1]—*Lord Bramwell*, Stonor *v.* Fowle (1887), L. R. 13 Ap. Ca. 28.

See 10, *below.*

10. We cannot explore any mode of sentencing a man to imprisonment, who is imprisoned already, but by tacking one imprisonment to the other.[2]—*Wilmot*, L.C.J., Wilkes' Case (1763), 19 How. St. Tr. 1134.

See 9, *above; also* 3, *above, n.*

Railway Company.

1. Every person of any experience in Courts of justice, knows that a scintilla of evidence against a railway company is enough to secure a verdict for the plaintiff. I was once in a case before a most able

[1] This refers to the power of committal on judgment summons; the last remnant of a jurisdiction analogous to imprisonment for debt left in our law.

[2] See Castro *v.* The Queen, L. R. 6 App. Cas. 229.

"Violent courses are like to hot waters that may do good in an extremity, but the use of them doth spoil the stomach, and it will require them stronger and stronger, and by little and little they will lessen their own operation."—*Co.* 4 *Inst.* 47. *See also suprà*, MISCELLANEOUS, 21.

Railway Company—*continued.*

Judge, the late Chief Justice Jervis, in which I was beaten, I dare say rightly, in consequence of an observation of his: "Nothing is so easy as to be wise after the event."—*Bramwell*, B., Cornman *v.* The Eastern Counties Rail. Co. (1859), 5 Jur. (N. S.) 658.

See MISCELLANEOUS, 15.

2. Cases before the Railway Commissioners must not be cited as authorities to us.—*Bramwell*, L.J., Great Western Rail. Co. *v.* Railway Commissioners (1881), 50 L. J. Q. B. 489.

Reasonable.

1. There is no point on which a greater amount of decision is to be found in Courts of law and equity than as to what is reasonable; for instance, reasonable time, reasonable notice, and the like. It is impossible *à priori* to state what is reasonable in such cases. You must have the particular facts of each case established before you can ascertain what is meant by reasonable time, notice, and the like.—*Lord Romilly*, M.R., Labouchere *v.* Dawson (1872), L. R. 13 Eq. Ca. 325.

See EQUITY, 14, 33; LAW, 52.

2. A reasonable fine is such as the law will judge to be so . . . but what a reasonable fine is, and who shall be the judge of it, the law has established no rule.—*Lord Hardwicke*, Moore's Case (1736), 17 How. St. Tr. 914.

3. I take it that reasonable human conduct is part of the ordinary course of things.—*Lindley*, L.J., "The City of Lincoln" (1889), L. R. 15 P. D. 18.

See LAW, 35; MISCELLANEOUS, 24, 53; PROTECTION, 1, 2.

4. To me the entire uselessness of such rules as practical guides lies in the inherent vagueness of the word "reasonable," the absolute impossibility of finding a definite standard, to be expressed in language, for the fairness and the reason of mankind, even of Judges. The reason and fairness of one man is manifestly no rule for the reason and fairness of another, and it is an awkward, but as far as I see, an inevitable consequence of the rule, that in every case where the decision of a Judge is overruled, who does or does not stop a case on the ground that there is, or is not, reasonable evidence for reasonable men, those who overrule him say, by implication, that in the case before them, the Judge who is overruled is out of the pale of reasonable men.—*Lord Coleridge*, Dublin, &c. Rail. Co. *v.* Slattery (1878), L. R. 3 App. Ca. 1197.

See also DISCRETION, 1, 9.

Relief.

1. Shall we relieve a man, that trusts when he needs not?—*Holt*, C.J., Tawney's Case (1703), 2 Raym. 1013.

   See EQUITY, 27; FRAUD, 4, 10, 29; MISCELLANEOUS, 33; PROPERTY, 12; TITLE, 4; TORT, 16.

2. A Court of justice ought not to relieve a plaintiff, upon a ground of action immoral or illegal.[1]—*Lord Mansfield*, Stotesbury *v.* Smith (1759), 2 Burr. Part IV. 926.

   See CRIMINAL JUSTICE, 51; FRAUD, 35; LAW, 61, 69, 74; MORALS, 1; PUBLIC POLICY, 7.

3. It is a maxim in our law that a plaintiff must shew that he stands on a fair ground when he calls on a Court of justice to administer relief to him.—*Lord Kenyon*, C.J., Booth *v.* Hodgson (1795), 6 T. R. 409.

   See ADMINISTRATION OF JUSTICE, 1, 10; EQUITY, 26, 33; FRAUD, 34; LAW, 66; PARLIAMENT, 9; PLEADINGS, 6; PROCESS, 2; PROSECUTION; TORT, 2, 9, 27.

Religion.

1. It is the office of Judges to advance laws made for religion, according to their end, though the words be short and imperfect.—*Hobart*, C.J., Colt *v.* Glover (1614), Ld. Hob. Rep. 157.

   See BIBLE, 2; BLASPHEMY; CHRISTIANITY, 3, 7; COMMERCE, 26; LAW, 56, 57; MATRIMONY, 3; POOR, 3.

2. He that seemeth to be religious, and bridleth not his tongue, his religion is vain.[2]—Quoted by *Lisle* (Lord President), in Hewet's Case (1658), 5 How. St. Tr. 894.

3. I for one would never be a party, unless the law were clear, to saying to any man who put forward his views on those most sacred things, that he should be branded as apparently criminal because he differed from the majority of mankind in his religious views or convictions on the subject of religion. If that were so, we should get into ages and times which, thank God, we do not live in, when people were put to death for opinions and beliefs which now almost all of us believe to be true.[3]—*Lord Coleridge*, L.C.J., Reg. *v.* Bradlaugh and others (1883), 15 Cox, C. C. 230.

   See MISCELLANEOUS, 4.

[1] See again a similar ruling *per Lord Mansfield*, Holman *v.* Johnson (1775), 1 Cowp. 343 (*antè*, PUBLIC POLICY, 7), quoted by Grantham, J., Burrows v. Rhodes (1899), L. R. 1 Q. B. D. [1899], p. 823.

[2] *James* i., 26.

[3] All persecution and oppression of weak consciences on the score of religious persuasions, are highly unjustifiable upon every principle of natural reason, civil liberty, or sound religion.—*Sir Wm. Blackstone* (1765), Com. Bk. IV., Ch. 4, p. 40.

Religion—*continued.*

4. No laws can be of avail except in so far as they are founded on religion.—*Park*, J., Williams *v.* Paul (1830), 6 Bing. 653.

See BIBLE, 1, *n.*; CHRISTIANITY, 6; MISCELLANEOUS, 20.

Reputation.

A man may be reputed an able man this year, and yet be a beggar the next: it is a misfortune that happens to many men, and his former reputation will signify nothing.[1]—*Holt*, L.C.J., Reg. *v.* Swendsen (1702), 14 How. St. Tr. 596.

See ADMINISTRATION OF JUSTICE, 5; CHARACTER, 3, 5; CRIMINAL JUSTICE, 2; EVIDENCE, 20; MISCELLANEOUS, 18, 40, 44, 47, 48; PLEADINGS, 3; WITNESS, 2.

Retainer.

I can only repeat what I said on a former occasion, and what almost every other Judge has said, that the right of retainer is a relic of old law, not founded on justice, and working the greatest possible injustice.—*Malins*, V.-C., Crowder *v.* Stewart (1880), 16 L. R. C. D. 369.

Revenue.

1. No country ever takes notice of the *revenue* laws of another.—*Lord Mansfield*, Holman *v.* Johnson (1775), 1 Cowp. 343.
2. One nation does not take notice of the revenue laws of another.—*Lord Mansfield*, Planche and another *v.* Fletcher (1779), 1 Doug. 253. See also *per Abbott*, C.J., James *v.* Catherwood (1823), 3 D. & R. 191; *per Rolfe*, B., Bristow *v.* Sequeville (1850), 5 Ex. 279.

Reward.

Every reward has its proper bounds.—*Yates*, J., Millar v. Taylor (1769), 4 Burr. Part IV. 2391.

See DAMAGES, 1; PARDON, 4, *and references therefrom;* TORT, 15.

Rights.

1. Old rights must remain: it would be very unreasonable if it should be otherwise.—*Yates*, J., Mayor, &c. of Colchester *v.* Seaber (1765), 3 Burr. Part IV. 1872.

See USAGE, 2.

[1] "Reputation is an idle and most false imposition; oft got without merit, and lost without deserving."—*Shakspeare*, "Othello" (Iago), Act II., Sc. iii. "The blaze of a reputation cannot be blown out, but it often dies in the socket."—*Dr. S. Johnson*, Letter, 1st May, 1780, to Mrs. Thrale.

Rights—*continued.*

2. A pretensed right is no right at all.—*Powell*, J., Reg. *v.* Mackarty (1705), 2 Raym. 1183.

   See TORT, 13.

3. It shall not be in the power of any man, by his election, to vary the rights of two other contending parties.—*Lord Mansfield*, Drinkwater *v.* Goodwin (1775), Cowp. 251.

   See CONSENT, 2; JUDICIAL PROCEEDINGS, 12; LITIGATION, 2; PLEADINGS, 3; PRACTICE, 7, 11, 22, 24; STATUTES, 13.

4. By the laws of England, there can be no special right, no particular interest or privilege whatever, of perpetual duration, but such as have respect to some kind of inheritance.—*Yates*, J., Millar *v.* Taylor (1769), 4 Burr. Part IV. 2385.

   See DILIGENCE, 2; EQUITY, 15, 17, 37; JUDGES, 19, *n.*; 37; JUSTICE, 3; LAW, 19; PUNISHMENT, 6; TORT, 6; TRESPASS, 2.

Schoolmaster.

1. A man's scholarship may be perfect, his character admirable, and yet, for want of the power to control subordinates and govern boys, he may be wholly unfit for a schoolmaster.—*Sir R. Malins*, V.-C., Hayman *v.* Governors of Rugby School (1874), L. R. 18 Eq. Ca. 85.

   See also PARENT AND CHILD, 4.

2. An original thinker and able teacher very soon attracts a large class and *vice versâ*.—*Lord Watson*, Caird *v.* Sime (1887), 57 L. J. P. C. 9.

3. Let the soldier be abroad if he will, he can do nothing in this age. There is another personage, a personage less imposing in the eyes of some, perhaps insignificant. The schoolmaster is abroad, and I trust to him, armed with his primer, against the soldier in full military array.—*Lord Brougham* (1828), Speech (Jan. 28).

   See also ARMY, 1.

4. A master should be paid liberally, in order to secure a person properly qualified.—*Sir J. Romilly*, Att.-Gen. *v.* Warden, &c. of Louth School (1852), 14 Beav. 206.

   See also UNIVERSITIES, 2.

Scotland.

1. Of course, Scotsmen are not foreigners. They are fellow-subjects of ours, and they are in the same position as any other fellow-subjects, with the important exception that their system of jurisprudence differs in very important particulars from ours . . . and to call a

Scotland—*continued.*

Scotsman an English subject is a perfect absurdity.—*Rigby*, L.J., Mac Iver *v.* Burns (1895), L. R. 2 C. D. [1895], p. 637.

2. I do not discuss the Scotch cases. They are not binding on us as authorities, though of the greatest service, as containing the opinions and arguments of able and accomplished lawyers.—*Bramwell*, L.J., Johnson *v.* Raylton (1881), L. R. 7 Q. B. 449.[1]
3. I will venture to say, there is no country existing which is at present more flourishing; no people whose general condition is better, or whose rights and liberties are more firmly secured.—*Lord President*, Downie's Case (1794), 24 How. St. Tr. 187.

See also JUDICIAL PROCEEDINGS, 7; MATRIMONY, 7, *n.*

Settlements.

1. A married woman having an estate settled for her separate use without power of anticipation can play fast and loose to a greater extent than if she were a *feme sole*.—*Lindley*, M.R., Lady Bateman *v.* Faber (1898), 77 L. T. Rep. 578.
2. There is no merit in a settlement: it depends upon positive law.—*Wilmot*, J., Rex *v.* Corporation of Carmarthen (1759), 2 Burr. Part IV. 873.
3. *Settlements* are supposed in law to be indifferent to paupers; though they are often in fact desirous of one in preference to another.[2]—*Wilmot*, J., Rex *v.* Inhabitants of Burton-Bradstock (1765), Burrow (Settlement Cases), 535.

Sheriff.

1. I do really believe you, Mr. Sheriff; you have done like an honest man.—*Keating*, C.J., Case of John Price and others (1689), 12 How. St. Tr. 625.
2. The sheriffs of London have been immemorially the sheriff of Middlesex.—*Yates*, J., Case of John Wilkes (1763), 19 How. St. Tr. 1096.

See USAGE, 5.

[1] Also *per Cotton*, L.J., *id.* 445. See also *per Bramwell*, L.J., 1 L. J. Q. B. 756. *Per Field*, J., in Great Western Co. *v.* Railway Commissioners (1881), 50 L. J. Q. B. 486; *per Day*, J., in Morgan *v* London General Omnibus Co. (1883), L. R. 12 Q. B. D. 205.

[2] It would be interesting to cite an authority in a Settlement Case reported in rhyme, one of a very limited number of such cases. Amongst those cited by counsel in the case of Rex *v.* Inhabitants of Norton (1738) (Burrow, S. C. 124), was that of *Shadwell* and *St. John*

Shipping.

1. A salvage service which hardly exceeds ordinary towage is naturally remunerated on a very different scale from an heroic rescue from imminent destruction.—*Lindley*, L.J., "The City of Chester" (1884), L. R. 9 Pr. Div. 202.
2. The impulsive desire to save human life when in peril is one of the most beneficial instincts of humanity, and is nowhere more salutary in its results than in bringing help to those who, exposed to destruction from the fury of winds and waves, would perish if left without assistance.—*Cockburn*, C.J., Scaramanga *v.* Stamp (1880), L. R. 5 Com. Pl. D. 304.
3. I am sorry to see a decreasing tendency to aid vessels that are broken down.—*Butt*, J., "The Benlarig" (1888), L. R. 14 Pro. D. 6.
4. It is of great importance that the laws by which the contracts of so numerous and so useful a body of men as the sailors are supposed to be guided, should not be overturned.—*Lord Kenyon*, C.J., Cutter *v.* Powell (1795), 6 T. R. 320.

See also NAVY, 7.

Solicitor and Client.

1. What a solicitor is privileged from disclosing is that which is communicated to him *sub sigillo confessionis*—that is to say, some fact which the client communicates to the solicitor for the purpose of obtaining the solicitor's professional advice and assistance.—*Sir W. M.*

Wapping, which dealt with Poor Law settlement, in reference to which the reporter says:

"I do not find the case of *Shadwell* and *St. John Wapping* in any printed book or manuscript: Bnt I guess it to be the same case which I have heard reported in the form of a catch, to the following effect (if my memory serves me right):

A Woman having a Settlement
Married a Man with none:
The Question was, he being dead,
'If that she had, was *gone*.'
Quoth Sir *John* Pratt,*—'Her Settlement
Suspended did remain
Living the Husband: But him dead,
It doth *revive* again.'

(Chorus *of Puisné Judges.*)

'Living the Husband: But him dead,
It doth revive again.'"

* Then Lord Chief Justice.

The introduction of verses into a report makes the foregoing worthy of reproduction. A subsequent case apparently reversed this decision, for some verses are extant to this effect:

"A Woman having Settlement,
Married a Man with none:
He flies and leaves her destitute,
What then is to be done?
"Quoth Ryder, the Chief Justice,
In spite of Sir John Pratt,
You'll send her to the parish
In which she was a brat.
"Suspension of a Settlement
Is not to be maintained,
That which she had by birth subsists
Until another's gained.

(Chorus *of Puisné Judges.*)

"'That which she had by birth subsists
Until another's gained.'"

Solicitor and Client—*continued.*

James, L.J., *Ex parte* Campbell, *In re* Cathcart (1870), L. R. 5 Ch. App. 703.[1]

See ATTORNEYS, *suprà*.

2. It is of the highest importance that a man should be able to consult his solicitor without fear.—*Cave*, J., *Re* Arnott (1899), 60 L. T. 109.

See MISCELLANEOUS, 33.

Sovereignty.

1. Let kings be as David was, men after God's own heart, yet they will not want a Shimei to rail on them.[2]—*Finch*, L.C.J., Hampden's Case (1637), 3 How. St. Tr. 1232.

2. The King can do no wrong; he cannot constitutionally be supposed capable of injustice.[3]—*Sir John Nicholl*, Goods of King George III., deceased (1822), 1 St. Tr. (N. S.) 1287.

See FORFEITURE.

3. The King of England is one of those princes who hath an Imperial

[1] See also *Smith* v. *Kay*, 7 H. L. Cas. 750—779. "The secrets were imparted to the solicitor for the client's benefit, and should not be used to his detriment." See also on this subject, the *Gentleman's Magazine*, Vol. XIV., 255.

[2] See 2 *Sam.* xvi., 5 *et seq.*

[3] The prerogative is, that which the law presumeth, "That the King can do no wrong," and so it is in Bracton: "*Rex potest facere quod de jure potest facere.*" 11 Rep., Magdalen College Case, 246; Plowden's Comment. The King can do no wrong, nor any act to wrong the subject. Bracton: "*Hoc non potest agere quod non potest agere juste.*" See also 22 Edw. IV. *Rex non potest peccare.* 2 Rolle, R. 304.

Though it be a rule of the Constitution that the King can do no wrong, at the same time the possibility that a subject may suffer a private injury from him, is recognised; and in such a case does the Constitution say, that the subject has no remedy but by a petition to the Crown, to do him right if the King think fit? No, but that on a petition to the Crown, the injury shall be referred to an ordinary Court of justice. In the British Constitution, however, it has hitherto been considered that the law ought to be supreme, that the law ought to be superior to the several powers of the State, because it is only by the law that those powers exist at all; by what other title but by the law of the land does the House of Commons possess any powers at all? "Ipse autem rex," says Bracton, "non debet esse sub homine, sed sub deo, et sub lege, quia lex facit regem. Attribuat igitur rex legi, quod lex attribuat ei, vide licet dominationem et potestatem, non est enim rex ubi dominabitur voluntas et non lex. (*Lib.* 1, c. 7, s. 5.) And though he considers the King to be the vicegerent of the Deity, he says still he should be subject to the laws. "Et quod sub lege esse debeat, cum sit Dei vicarius, evidenter apparet ad similitudinem Jesu Christi, cujus vices gerit in terris, quia verax Dei misericordia, cum ad reparandum humanum genus in effabiliter ei multa suppeteret hanc potissimam elegit viam, quasi ad destruendum opus diaboli, non virtute uteretur potentiæ, sed justitiæ ratione; et sic esse voluit sub lege, ut eos qui sub lege erant redimeret noluit enim uti viribus, sed ratione et judicio." "God himself," *Lord Bolingbroke* ("Patriot King"), has, almost sublimely, said, "with reverence be it spoken, is not an absolute but a limited monarch, limited by the rule which infinite wisdom prescribes to infinite power." See further on the subject of this maxim, *Blac. Com.* I., 246; St. Tr. (N. S.) Vol. I., 1284; *Broom's* "Legal Maxims" (ed. 1884), p. 46. Also *Woodfall's* ed. of "Junius' Letters" (1812), Vol. I., 41.

Sovereignty—*continued.*

Crown; what is that? It is not to do what he will; no, but it is that he shall not be punished in his own person if he doth that which in itself is unlawful.—*Lord Bridgman*, C.B., Case of Hugh Peters (1660), 5 How. St. Tr. 1144.

4. An *hiatus* in government is so detested and abhorred, that the law says, "the King never dies," that there may never be a "cesser" of regal functions for a moment.[1]—*Wilmot*, L.C.J., Case of John Wilkes (1763), 19 How. St. Tr. 1130.

5. A people whom Providence hath cast together into one island or country are in effect one great body politic, consisting of head and members, in imitation of the body natural, as is excellently set forth in the statute of appeals, made 24 H. 8, c. 12, which stiles the King the supreme head, and the people a body politic (these are the very words), compact of all sorts and degrees of men, divided into spirituality and temporality. And this body never dies.—*Sir Robert Atkyns*, L.C.B., Trial of Sir Edw. Hales (1686), 11 How. St. Tr. 1204.

See 6, *below.*

6. It is true that the King never dies; the demise is immediately followed by the succession; there is no interval: the Sovereign always exists; the person only is changed.[2]—*Lord Lyndhurst*, Viscount Canterbury *v.* Att.-Gen. (1843), 1 Phill. 322.

See 5, *above.*

7. All Governments rest mainly on public opinion, and to that of his own subjects every wise Sovereign will look. The opinion of his subjects will force a Sovereign to do his duty, and by that opinion will he be exalted or depressed in the politics of the world.—*Lord Kenyon*, Trial of John Vint and others (1799), 27 How. St. Tr. 640.

8. The Queen is a subject.[3]—*Lord Bridgman*, C.B., Scot's Case (1660), 5 How. St. Tr. 1069.

9. As a subject sues by attorney, so does the King; with a little variation of form, from decency: instead of saying, "The King sues by——," it is said, "sues for the King"; and yet, "*Coram domino rege venit dominus rex per attornatum suum, et inde producit sectam,*" was held to be good. Hale, Chief Justice, said, it was but an unmannerly way of

[1] "*Le Roi est mort, vive le Roi.*"—*Fr. Rex nunquam moritur.* — See *Broom*, Leg. Max. (ed. 1884), p. 43 *et seq.* and references.

[2] The person of the King is by law made up of two bodies: a natural body, subject to infancy, infirmity, sickness and death; and a political body, powerful, perfect and perpetual.—*Bagshaw*, "Rights of the Crown of England," 29.

[3] This refers to the Queen Consort. The Queen Regnant is, of course, no subject.

Sovereignty—*continued.*

declaring for the King.[1]—*Lord Mansfield,* Case of John Wilkes (1763), 19 How. St. Tr. 1102.

See also, ATTORNEY-GENERAL; 1, *suprà.*

10. The Sovereign can only act by advisers, and through the instrumentality of those who are neither infallible nor impeccable—answerable, indeed, for all that the irresponsible Sovereign may do, but liable to err through undue influence, and to be swayed by improper motives.[2]—*Lord Brougham,* (1854), Brownlow *v.* Egerton (1854), 23 L. J. Rep. Part 5 (N. S.), Ch. 390; 8 St. Tr. (N. S.) 258.

See FRAUD, 22; LIBERTY OF THE PRESS, 1; LIBERTY OF THE SUBJECT, 3; MISCELLANEOUS, 54; MISTAKES, 1, 4; MOTIVES, 7; POLITICS, 4; TRUTH, 13.

11. Menial servants attending the King must undoubtedly be privileged. —*Lord Ellenborough,* C.J., Batson *v.* McLean (1815), 2 Chitt. Rep. 52.

12. The master is answerable for the negligence of his servant, because it may be considered to have arisen from his own misconduct or negligence in selecting or retaining a careless servant; that principle cannot apply to the Sovereign, to whom negligence or misconduct cannot be imputed, and for which if they occur in fact, the law affords no remedy.—*Lord Lyndhurst,* Viscount Canterbury *v.* Att.-Gen. (1843), 1 Phill. Rep. 321.

See MASTER AND SERVANT, 3; PUBLIC POLICY, 6.

13. Compassing the death of the King is a legal conclusion from facts. So it is, almost, as to every other offence.—*Lord Mansfield,* Foxcroft *v.* Devonshire (1759), 2 Burr. Part IV. 937.

14. The law was the golden met-wand, and measure to try the causes of the subjects; and which protected his Majesty in safety and in peace.[3] *Prohibition del Roy,* Co. 12 Rep. 65.

See DISCRETION, 7.

Specific Performance.

Specific performance is relief which this Court will not give, unless in cases where the parties seeking it come promptly, and as soon as the

[1] "The King sues by his attorney," or "the attorney sues for the King," are only different forms of expressing the same thing. It is equally good either way, as appears by the cases in 2 Lev. 82, and 3 Keb. 127; and no legal reason, but good manners and decency, as Lord Hale calls it, have given the preference of one form to another. It is the King, who, by his attorney, gives the Court to understand and be informed of the fact complained of.—*Wilmot,* L.C.J. (1763), *id.,* p. 1128.

See *Co. 4th Inst.* cap. 11, "The Councell Board," p. 52.

[3] This is alluding to the law.

Specific Performance—*continued.*

nature of the case will permit.[1]—*Lord Cranworth*, Eads *v.* Williams (1854), 4 D. M. & G. 691.

Statutes.

1. Acts of Parliament are the works of the legislature, and the publication of them has always belonged to the King, as the Executive Part, and as the Head and Sovereign.—*Lord Mansfield*, Millar v. Taylor (1768), 4 Burr. Part IV. 2404.
2. Notwithstanding all the care and anxiety of the persons who frame Acts of Parliament to guard against every event, it frequently turns out that certain cases were not foreseen.—*Lord Kenyon*, C.J., Farmer *v.* Legg (1797), 7 T. R. 190.

   See Administration of Justice, 15; Cases, 21; Chancery, 10; Common Law, 4; Construction, 32; Criminal Justice, 29; Law, 55, 62; Parliament, 3, *n.*
3. There is nothing so common in the framing of instruments as that whilst the framer of them is studious to avoid one inconvenience, he incurs another which does not present itself to his view. This is often to be seen in Acts of Parliament.—*Rooke*, J., Lord Nelson *v.* Tucker (1802), 3 Bos. & Pull. 275.

   See Cases, 3; Construction, 8, 11, 12, 28, 32; Conveyance, 2; Judicial Decisions, 5; Law, 22, 55; Parliament, 15.
4. Inconvenience arising from the operation of an Act of Parliament can be no ground of argument in a Court of law.—*Lord Alvanley*, C.J., Grigby *v.* Oakes (1801), 1 Bos. & Pull. 528.

   See Construction, 24, 31; Judges, 11, 13, 47; Law, 71; Parliament, 13.
5. *Un Act de Parlement poet fair aucun chose, comme de fair une feme Mayor ou Justice de Paix, car ceux sont les creatures des homes, mes ne poet alter le course del nature:* An Act of Parliament can do anything, as it may make a woman Mayor or Justice of the Peace, but it cannot alter the course of nature.—*Wild*, J., Crow *v.* Ramsey (1670), Jones's (Sir Thos.) Rep. 12.

   See also Woman, 2, *suprà.*
6. The language of statutes is peculiar, and not always that which a rigid grammarian would use; we must do what we can to construe them.—*Grove*, J., Lyons *v.* Tucker (1881), L. R. 6 Q. B. D. 664.

   See Cases, 15; Construction, 8, 20, 30; Judges, 62.

[1] Quoted by *Stirling*, J., in Levy *v.* Stogdon (1898), 1 Ch. D. [1898], p. 484.

Statutes—*continued.*

7. There are two ways of construing an Act of Parliament—one to extend it to every case reasonably within its operation, and the other to lay hold of every expression to limit and curtail the intention of the legislature.—*Sir John Stuart*, V.-C., *In re* Warner and Powell's Arbitration (1866), L. R. 3 Eq. Ca. 266.

   See 13, *below;* CONSTRUCTION, 11, 12, 16, 17, 28, 30; EQUITY, 10; JUDGES, 36, 67; LAW, 21, 29, 45, 71; MOTIVES, 15; PARLIAMENT, 13, 17; USAGE, 13.

8. All Acts of Parliament are to be expounded according to the true meaning to be collected from the words of 'em.[1]—*North*, C.J., Carter *v.* Crawley (1681), Sir Thos. Raym. Rep. 500.

   See 15, *below;* CONSTRUCTION, 6.

9. It is safest to keep to the Statute.—*Lord Mansfield*, Rex *v.* Inhabitants of Hatfield (1758), 1 Burr. Part IV. 497.

   See JUDGES, 28; LAW, 22.

10. We ought not to decide hastily against the words of an Act of Parliament.—*Lord Kenyon*, C.J., King *v.* Justices of Flintshire (1797), 7 T. R. 200.

    See 13, *below;* ADMINISTRATION OF JUSTICE, 2; JUDGES, 12, 16; PLEADINGS, 3.

11. The sense and meaning of an Act must be collected from what it says when *passed* into a law, and *not* from the history of changes it underwent in the House where it took its rise. That history is not known to the other House, or to the Sovereign.—*Willes*, J., Millar *v.* Taylor (1769), 4 Burr. 2332, cit. Caird *v.* Sime, L. R. 12 App. Cas. 356.

    See COMMON LAW, 1; JUDGES, 46.

12. No stops are ever inserted in Acts of Parliament, or in deeds; but the Courts of law, in construing them, must read them with such stops as will give effect to the whole.—*Lord Kenyon*, C.J., Doe d. Willis and others *v.* Martin and others (1790), 4 T. R. 65.

    See WILL, 16.

13. I do exceedingly commend the Judges that are curious and almost subtil, *Astuti* (which is the word used in the Proverbs of Solomon in a good sense, when it is to a good end) to invent reasons and means to make Acts, according to the just intent of the parties, and to avoid wrong and injury which by rigid rules might be wrought out of the

[1] We must give effect to the plain language of the legislature, according to the fair interpretation of the words of the Act.—*Abbott*, C.J., Baildon *v.* Pitter (1819), 1 Chit. Rep. 639.

Statutes—*continued.*

Act.—*Hobart*, C.J., Earl of Clanrickard's Case (1614), Lord Hobart's Rep. 277.

See 7, *above*; 27, *below*; CONSTRUCTION, 10; JUDGES, 31, 42, 44, 46, 47, 62, 67; LAW, 49, 50, 54; RIGHTS, 3; TORT, 17.

14. With regard to the construction of statutes according to the intention of the legislature, we must remember that there is an essential difference between the expounding of modern and ancient Acts of Parliament. In early times the legislature used (and I believe it was a wise course to take) to pass laws in general and in few terms; they were left to the Courts of law to be construed so as to reach all the cases within the mischief to be remedied. But in modern times great care has been taken to mention the particular cases in the contemplation of the legislature, and therefore the Courts are not permitted to take the same liberty in construing them as they did in expounding the ancient statutes.—*Lord Kenyon*, C.J., Bradley and another *v.* Clark (1793), 5 T. R. 201.

See COMMON LAW, 1; CONSTRUCTION, 29, 32; JUDGES, 63; JUDICIAL DECISIONS, 2.

15. We must decide according to the intention of the legislature, which is to be collected from the general object of the Act and from the particular words used in it.—*Grose*, J., Farmer *v.* Legg (1797), 7 T. R. 192.

See 8, 10, *above*; CONSTRUCTION, 3; FOREIGN LAW, 5; JUDGES, 9, 28, 63; PARLIAMENT, 17; WILL, 8.

16. These laws must be construed according to the intention of them: and the circumstances of things at the time of enacting them ought to be taken into consideration.[1]—*Wilmot*, J., Rex *v.* Inhabitants of Burton-Bradstock (1765), Burrow (Settlement Cases), 536.

17. If it were a doubtful point how the statute should be construed, I must consider myself as bound by the construction it has already received in two Courts in *Westminster Hall*.—*Rooke*, J., Cox *v.* Morgan (1801), 1 Bos. & Pull. 411.

See below, 18, 19; CONSTRUCTION, 30; JUDGES, 35.

18. In the absence of all authority, I can only look to the language

[1] Our limited function is not to say what the legislature meant, but to ascertain what the legislature has said that it meant.—*Mathew*, J., Rothschild & Sons *v.* Commissioners of Inland Revenue (1894), L. R. 2 Q. B. D. [1894], p. 145. However we might wish to provide for every hardship that may occur, we are bound to put that construction on the Act that the legislature intended.—*Grose*, J., Farmer *v.* Legg (1797), 7 T. R. 193.

Statutes—*continued.*

of the statute.[1]—*Chambre*, J., Barnes *v.* Headley (1807), 1 Camp. 164.

See above, 17.

19. People cannot escape from the obligation of a statute by putting a private interpretation upon its language.—*Lord Macnaghten*, Netherseal Colliery Co. *v.* Bourne (1889), L. R. 16 Ap. Ca. 247.

See above, 17, 18; CONSTRUCTION, 25; JUDGES, 42; JURISDICTION, 13; PARLIAMENT, 17.

20. There is a great difference between the *Purview* of an Act of Parliament, and a *Proviso* in an Act of Parliament.—*Lord Mansfield*, Rex *v.* Jarvis (1756), 1 Burr. Part IV. 153.

21. A statute cannot alter by reason of time, but the common law may.—*Ask*, J., Anon. (1649), Style's Rep. 190.

See COMMON LAW, 5, 6.

22. A Court cannot give itself jurisdiction by misconstruing a document or statute.—*Pollock*, B., Queen *v.* County Court of Lincolnshire and Dixon (1887), L. J. (N. S.) 57 Q. B. D. 137.

See CONSENT, 2; JURISDICTION, 7, 9, 12.

23. The statute is like a tyrant; where he comes he makes *all* void; but the common law is like a nursing father, makes only void that *part* where the fault is, and preserves the rest.—*Lord Hobart*, C.J., quoted by *Twisden*, C.J., in Maleverer *v.* Redshaw (1670), 1 Mod. Rep. 36; and by *Wilmot*, L.C.J., in Collins *v.* Blantern (1767), 2 Wils. 351.

24. The statute law is the will of the legislature in writing; the common law is nothing else but statutes worn out by time; all our law began by consent of the legislature, and whether it is now law by usage or writing, it is the same thing.—*Wilmot*, L.C.J., Collins *v.* Blantern (1767), 2 Wils. 341.

See COMMON LAW, 1, 6; JUDGES, 65.

25. Bind not the new statutes so to the common law, that their words increased for the King's advantage, should be deprived of their force.—*Hobart*, C.J., Sheffeild *v.* Ratcliffe (1614), Ld. Hob. Rep. 341.

[1] It is the duty of Judges, not to supply the defects of the legislature by providing a remedy, but simply to construe the provisions of the statute it has enacted.—*Patteson*, J., Gray *v.* The Queen (1844), 6 St. Tr. (N. S.) 150.

We ought to apply to this case what is called the golden rule of construction, namely, to give an Act of Parliament the plain, fair, literal meaning of its words, where we do not see from its scope that such meaning would be inconsistent, or would lead to manifest injustice.—*Jervis*, C.J., Mattison *v.* Hart and another (1854), 23 L. J. C. P. 114.

Statutes—*continued.*

26. A very ingenious attempt *to drive a coach-and-four*[1] through this Act of Parliament.[2]—*Lindley*, L.J., Queen *v.* Registrar of Joint Stock Companies (1891), 61 L. J. Rep. Q. B. 6.

27. The Court is not bound to a strictness at once harsh and pedantic in the application of statutes. The law permits the qualification implied in the ancient maxim, *de minimis non curat lex.* Where there are irregularities of very slight consequence, it does not intend that the infliction of penalties should be inflexibly severe. If the deviation were a mere trifle, which, if continued in practice, would weigh little or nothing on the public interest, it might properly be overlooked.—*Sir W. Scott*, "The Reward" (1820), 2 Dods. Adm. R. 269, 270.

See 13, *above*; IRREGULARITY.

Sunday.

1. Working days in England are not the same as working days in foreign ports, because working days in England, by the custom and habits of the English, if not by their law, do not include Sundays.—*Lord Esher*, M.R., Nielsen *v.* Wait (1885), L. R. 16 Q. B. 71.

2. Anciently, the Courts of justice did sit on Sundays.—*Lord Mansfield*, Swann *v.* Broome (1764), 3 Burr. Part IV., p. 1597.[3]

3. It would hardly be decent to adjourn the Court to Sunday.—*Cockburn*, C.J., Reg. *v.* Charlotte Winsor (1866), 10 Cox, C. C. 298.

4. It is laid down in distinct terms by high authority, that of Lord Coke[4] and Comyns,[5] that Sunday is not a juridical day.—*Cockburn*, C.J., Winsor *v.* The Queen (1866), L. R. 1 Q. B. D. 308.

5. I do not think there can be the smallest doubt that to sit judicially on Sunday on any business would be indecent and improper, and ought never to be done if it can be helped.—*Blackburn*, J., Winsor *v.* The Queen (1866), L. R. 1 Q. B. D. 317.

Text Books.

1. It is to my mind much to be regretted, and it is a regret which I believe every Judge on the bench shares, that text-books are more and more quoted in Court—I mean, of course, text-books by living

[1] This remark has been most generally made of the 4th section of the Statute of Frauds (29 Car. II. c. 3) in regard to contracts concerning land having to be in writing. Equity, deeming great injustice might occur by this rule being inflexibly adhered to, in certain cases allows these contracts to be enforced if unwritten.—See *Seton* v. *Slade*; *Woollam* v. *Hearn*, 2 Wh. & T. Eq. Cas. 475, 513.

[2] Companies Act, 1862 (25 & 26 Vict. c. 89).

[3] For a full exposition of this subject, see *id. et seq.*

[4] See *Co. Litt.* 135 (*a*).

[5] See *Com. Dig.* Temps, (B. 3 and (C. 5).

Text Books—*continued.*

authors—and some Judges have gone so far as to say that they shall not be quoted.[1]—*Kekewich*, J., Union Bank *v.* Munster (1887), L. R. 37 C. D. 54.

2. Brother,[2] Viner is not an authority. Cite the cases that Viner quotes: that you may do.—*Foster*, J., Far *v.* Denn (1757), 1 Burr. Part IV. 364.

See LAW REPORTS, 1, *n.*

3. I must treat with reverence everything which Lord Kenyon has said: but not everything which text writers have represented him to have said, which he did not say.—*Lefroy*, C.J., Persse *v.* Kinneen (1859), (Ir. Rep.) L. T. Vol. 1 (N. S.), 78.

4. Stereotyped rules laid down by judicial writers cannot be accepted as infallible canons of interpretation in these days, when commercial transactions have altered in character, and increased in complexity; and there can be no hard-and-fast rule by which to construe the multiform commercial agreements with which in modern times we have to deal.—*Bowen*, L.J., Jacobs *v.* Crédit Lyonnais (1884), L. R. 12 Q. B. D. 601; 53 L. J. Q. B. 159.

See COMMERCE, 13, 16, 20, 28, 29, 32; CONSTRUCTION, 19, 28; PARLIAMENT, 13.

Time.

1. It would certainly be a very great mistake to suppose that this Court does not attend to lapse of time.[3]—*Lord Langdale*, M.R., Att.-Gen. *v.* Pilgrim (1849), 12 Beav. 61.

2. The time makes no difference in the reason of the thing.—*Wilmot*, J., Rex *v.* Inhabitants of Christchurch (1759), 2 Burr. Part IV. 949.

See CHANCERY, 8.

[1] It is not very often that our leading text-books are judicially declared to be inaccurate, partly, it may be, because text-book writers generally travel along roads which have been, so to speak, consolidated by the ample weight of statutory and judicial authority, and partly because they forbear, as a rule, to ramble along the by-paths of speculation. Says *Austin* ("Jurisprudence," Vol. I., p. 37): "Respect for a law-writer whose works have gotten reputation, may determine the legislator or Judge to adopt his opinions, or to turn the speculative conclusions of a private man into actually binding rules. . . . Now till the legislator or Judge impress them with the character of law . . . the conclusions are the speculative conclusions of a private or unauthorised writer." *Fry* ("Specific Performance" (1881), 2nd ed. v.) remarks that "there is one notion often expressed with regard to works written or revised by authors on the Bench, which seems to me in part at least erroneous, the notion, I mean, that they possess a quasi-judicial authority. It is hardly enough remembered how different are the circumstances under which a book is written and a judgment pronounced, or how much the weight and value of the latter are due to the discussions at the Bar which precede the judgment."

[2] The term "brother" is explained under JUDGES, 53, *n.*

[3] "This I take notice of, only to shew an uncertainty as to time."—*Parker*, L.C.J., Purchase's Case (1710), 15 How. St. Tr. 686.

Time—*continued.*

3. Examining by hours is not so unprecedented. It was the old custom among the Romans to examine by the hour-glass.[1]—*Marlay*, L.C.J., Trial of Mary Heath (1744), 18 How. St. Tr. 23.

See JURY, 30.

Title.

1. I do not wish to shake titles, and I shall do precisely what our predecessors have always done—leave the case where it is. It is a

[1] When Bishop Burnet preached, "he was often interrupted by the deep hum of his audience; and when, after preaching out the hour-glass, which in those days was part of the furniture of the pulpit, he held it up in his hand, the congregation clamorously encouraged him to go on till the sand had run off once more."—*Macaulay's* "Hist. of England," II., 177.

Time, like a preacher in the days of the Puritans, turned the *hour-glass* on his high pulpit, the church belfry.—*Longfellow*, "Hyperion," IV., 5.

Whether any limitation was imposed on the length of the oral pleadings in early times is uncertain; but in the age of Cicero this seems to have been left to the discretion of the Judge, especially in private causes. In criminal trials Pompey made a regulation, that the accuser should not be entitled to speak for more than two hours, nor the accused for more than three hours; but the parties were sometimes allowed to exceed these limits when the nature of the cause appeared to require more time. Not long afterwards the Judges were again invested with discretionary power to regulate the period to be occupied by the speeches, according to the importance of the affair. In criminal causes the time was usually divided in the proportion fixed by the Pompeian regulation, so that if *six* hours were allowed to the accuser, *nine* hours were allowed to the accused. A clepsydra was used in the tribunals for measuring time by water, similar in principle to the modern sand-glass. When the Judge consented to prolong the period assigned for discussion, he was said to give water *dare aquam*. "As for myself," says Pliny, "whenever I sit upon the Bench (which is much oftener than I appear at the Bar), I always give the advocates as much water as they require; for I look upon it as the height of presumption to pretend to guess before a cause is heard what time it will require, as to set limits to an affair before one is acquainted with its extent, especially as the first and most sacred duty of a Judge is patience, which, indeed, is itself a very considerable part of justice. (On this *see antè*, JUDGES, 16, *n.*) But the advocate will say many things that are useless. Granted. Yet is it not better to hear too much than not to hear enough? Besides, how can you know that the things are useless till you have heard them?" Marcus Aurelius we are told, was in the habit of giving a large measure of water to the advocates, and even permitting them to speak as long as they pleased. By a constitution of Valentinian and Valens, A.D. 368, advocates were authorised to speak as long as they wished, upon condition that they should not abuse this liberty in order to swell the amount of their fees. Sometimes the pleadings were very long: for, if we are to believe Quintilian, it was a species of glory for an advocate that he had spoken a whole day for one party. Regulus fatigued the Judges with interminable harangues. In the trial of Marcus Priscus before the Senate, Pliny, who opened the case, spoke nearly five hours. On another occasion, he tells us, he spoke for seven hours, before the centumvirs and a crowded audience, with success equal to his great fatigue. According to ancient custom, one counsel only appears to have been allowed on each side. Afterwards the number was increased.—*Studies in Roman Law, with Comparative Views of the Laws of France, England and Ireland.* By Lord Mackenzie, one of the Judges of the Court of Session in Scotland: London, 1861, Blackwood.

Title—*continued.*

rock ahead that everybody knows.—*Lindley*, L.J., *In re* Lashmar (1890), L. J. Rep. (N. S.) 60 Ch. 146.

2. God forbid, that a man should lose his estate by losing his title deeds.—*Eyre*, C.J., Bolton *v.* Bishop of Carlisle (1793), 2 H. B. 263.
3. There is not more difference betwixt a grant and feoffment, than betwixt one egg and another.—*Bridgman*, C.J., Jemot *v.* Cooley (1666), Sir Thos. Raymond's Rep. 159.
4. No man ought to be so absurd as to make a purchase without looking at the title deeds; if he is, he must take the consequence of his own negligence.—*Ashhurst*, J., Goodtitle *v.* Morgan (1787), 1 T. R. 762.

   See Commerce, 12; Fraud, 10, 19; Miscellaneous, 10, 33, 40; Protection, 2; Relief, 1; Tort, 16.
5. Immemorial enjoyment is the most solid of all titles.—*Tindal*, C.J., In the Matter of the Serjeants-at-Law (1840), 6 Bing. New Cases, 238.

Tort.

1. The general principle is, that in order that an action may be maintained in this country in respect of a tort committed outside the jurisdiction, the act complained of must be a wrongful act, both by the law of this country and by the law of the country where it was committed; but it is not necessary that it should be the subject of civil proceedings in the foreign country.—*Lopes*, L.J., Machado *v.* Fontes (1897), 66 L. J. Q. B. D. 543.

   See Contract, 3; Foreign Law, 4; Law, 24, 66; Practice, 12.
2. To entitle a plaintiff to maintain an action, it is necessary to shew a breach of some legal duty due from the defendant to the plaintiff.—*Erle*, C.J., Cox *v.* Burbidge (1863), 13 C. B. (N. S.) 436.

   See also 9, *below*; Criminal Justice, 7; Discovery, 2; Equity, 26, 37; Law, 54, 66; Motives, 12; Parliament, 9; Pleadings, 6; Relief, 3.
3. That great principle of the common law which declares that it is your duty so to use and exercise your own rights as not to cause injury to other people.—*Williams*, J., Gray *v.* North-Eastern Rail. Co. (1883), 48 L. T. Rep. (N. S.) 905.

   See also below, 18; Mischief, 2; Miscellaneous, 11; Truth, 8.
4. The well-known maxim that you must not, when you have the choice, elect to use your property so as to cause injury to your neighbour.[1]—

[1] The maxim is *Sic utere tuo ut alienum non lædas.*—9 *Rep.* 59. See Br. Leg. Max., 6th ed., 347.

Tort—*continued.*

Brett, M.R., Whalley *v.* Lancashire, &c. Rail. Co. (1884), 13 L. R. Q. B. D. 137.

See also 14, 18, *below;* DOCTRINE, 3; EQUITY, 38; PROPERTY, 13.

5. Surely every injury imports a damage, though it does not cost the party one farthing, and it is impossible to prove the contrary; for a damage is not merely pecuniary, but an injury imports a damage, when a man is hereby hindered of his right.—*Holt*, C.J., Ashby *v.* White (1703), 2 Raym. 955.

See MISCELLANEOUS, 41; TRESPASS, 2; TRUTH, 8.

6. *La ley est un egal dispenser de Justice, et ne relinque aucun sans remedy sur son droit, sans son propre laches:* The law is an equal dispenser of Justice, and leaves none without a remedy, for his right, without his own laches.—*Vaughan*, J., Tustian *v.* Roper (1670), Jones's (Sir Thos.) Rep. 32.

See 20, *below;* JUDGES, 27; JUSTICE, 3; LAW, 19, 32; LIBERTY OF THE SUBJECT, 5; POLITICS, 3; POOR, 3; PROTECTION, 2; PUNISHMENT, 6; RIGHTS, 4; TRESPASS, 1.

7. Personal injury is a more serious matter than damage to property.—*Cockburn*, C.J., Reg. *v.* Heppinstale (1859), 7 W. R. 178.

See TRESPASS, 2.

8. An injured party may proceed in *Westminster Hall* notwithstanding any order of the House.[1]—*Willes*, C.J., Wynne *v.* Middleton (1745), 1 Wils. 128.

See ADMINISTRATION OF JUSTICE, 21; JUDGES, 19, 20, 37, 38; JUSTICE, 4; LAW, 66; PARLIAMENT, 9; POLITICS, 4; PROPERTY, 7.

9. If a man sustains damage by the wrongful act of another, he is entitled to a remedy, but to give that title two things must concur, damage to himself and a wrong committed by the other. That he has sustained damage is not of itself sufficient.—*Bayley*, J., R. *v.* Commissioners of Pagham (1828), 8 B. & C. 362.

See 2, *above;* PROSECUTION; RELIEF, 3.

10. Actual perceptible damage is not indispensable as the foundation of an action; it is sufficient to show the violation of a right, in which case the law will presume damage.[2]—*Lord Holt*, Ashby *v.* White (1703), 3 Ld. Raym. 938.

[1] See *per Cockburn*, C.J., in Onslow and Whalley's Case, L. R. 9 Q. B. 225, and *per Denman*, C.J., in Stockdale *v.* Hansard, 9 A. & E. 142.

[2] I am not able to understand how it can be correctly said in a legal sense, that an action will not lie even in the case of a wrong or a violation of a right, unless it is followed by some perceptible damage which can be established as a matter of fact; in other words, that *injuria sine damno* is not actionable. On the contrary,

Tort—*continued.*

11. I am by no means sure that if a man kept a tiger, and lightning broke his chain, and he got loose and did mischief, that the man who kept him would not be liable.[1]—*Bramwell*, B., Nichols *v.* Marsland (1875), L. R. 10 Ex. 260.

See also MISCELLANEOUS, 12, *n.*

12. To say that whenever the world grows wiser it convicts those that came before of negligence.[2]—*Bramwell*, B., Carstairs *v.* Taylor (1871), L. R. 6 Ex. 222.

See also MISCELLANEOUS, 3, 6, 24.

13. The public can have no rights springing from injustice to others.[3]—*Lord Romilly*, M.R., Walker *v.* Ware, Hadham, &c. Rail. Co. (1866), 12 Jur. (N. S.) 18.

See EQUITY, 37; RIGHTS, 2.

14. It is our duty to take care that persons in pursuing their own particular interests do not transgress those laws which were made for the benefit of the whole community.—*Lord Kenyon*, C.J., King *v.* Waddington (1800), 1 East, 158.

See 4, *above;* 15, *below.*

15. Every man that is injured ought to have his recompence.[4]—*Holt*, C.J., Ashby *v.* White (1703), 2 Lord Raym. 955.

See 4, *above;* 18, *below;* DAMAGES, 1; PARDON, 4; REWARD.

16. If a man who makes to another person, upon a solemn occasion, an assertion, upon which that person acts, he lies under an obligation to make good his assertion.—*Sir J. Romilly*, M.R., *Re* Ward, (1862), 31 Beav. 7.

See COMMERCE, 12; CONTRACT, 2; EQUITY, 24, 28; FRAUD, 2, 14; LAW, 41; MISCELLANEOUS, 9, 10, 33; PROPERTY, 12; PROTECTION, 2; RELIEF, 1; TITLE, 4; TRUTH, 8; WORDS, 8.

from my earliest reading I have considered it laid up among the very elements of the common law, that wherever there is a wrong there is a remedy to redress it; and that every injury imports damage in the nature of it; and if no other damage is established, the party injured is entitled to a verdict for nominal damages.—*Mr. Justice Story*, Webb *v.* Portland Manufacturing Co., 3 Sumn. Rep. 189.

[1] This is a *dictum* in relation to the maxim *Actus Dei nemini facit injuriam.* *See antè* MISCELLANEOUS, 12, *n.* Also Br. Leg. Max., 6th ed. 224.

[2] This remark is made to show that increased precautions after accidents are not, when standing alone, evidence of previous negligence.

[3] *Ex dolo malo non oritur actio.*—*Cowp.* 343.

[4] This again brings in the maxim *Ubi jus ibi remedium.* But this *dictum* (*suprà*) is crowded with exception. For instance, if a person is wrongfully accused of a crime and put to worry and expense and perhaps imprisoned, he is entitled to no recompense: again, if a person is injured by a person not responsible, *e.g.*, an ambassador, or the Crown. Perhaps this is why *Holt*, C.J., uses the word "ought" and not "can"—and that it is used advisedly.

Tort—*continued.*

17. None shall take advantage of his own wrong.[1]—*Lord Coke*, Dumpor's Case (1603), 4 Co. 119.

See EQUITY, 6, 8, 28; STATUTES, 13.

18. He whose dirt it is must keep it that it may not trespass.[2]—*Holt*, C.J., Tenant *v.* Goldwin (1704), 1 Salk. 361.

See 3, 4, 14, 15, *above*.

19. I know of no duty of the Court which it is more important to observe, and no powers of the Court which it is more important to enforce, than its power of keeping public bodies within their rights. The moment public bodies exceed their rights they do so to the injury and oppression of private individuals, and those persons are entitled to be protected from injury arising from such operations of public bodies.—*Lindley*, M.R., Roberts *v.* Gwyrfai District Council (1899), L. R. 2 C. D. 614.

See 23, *below*; ADMINISTRATION OF JUSTICE, 35; CORPORATIONS, 1; PUBLIC POLICY, 9; TRESPASS, 2.

20. It is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal.—*Holt*, C.J., Ashby *v.* White (1703), 2 Raym. 953.

See 6, *above*.

21. Where a man has but one remedy to come at his right, if he loses that he loses his right.—*Holt*, C.J., Ashby *v.* White (1703), 2 Raym. 954.

22. It is not very consonant with the simplicity of the old law to give two remedies for the same evil.—*Eyre*, C.J., Jefferson *v.* Bishop of Durham (1797), 2 Bos. & Pull. 122.

23. Better that an individual should suffer an injury than that the public should suffer an inconvenience.—*Ashhurst*, J., Russell *v.* The Mayor of Devon (1788), 1 T. R. 673.

See 19, *above*; ADMINISTRATION OF JUSTICE, 35; JUDGES, 13; PUBLIC POLICY, 9.

24. The advantage to the community outweigh the injury to the individual.[3]—*Grove*, J., Henwood *v.* Harrison (1872), L. R. 7 Com. Pl. Ca. 613.

25. What a man does in his closet ought not to affect the rights of

[1] *Ex dolo malo non oritur actio* (*suprà*, 13, *n.*). "Nul prendra advantage de son tort demesne."—2 *Inst.* 713. *Commodum ex injuriâ suâ nemo habere debet:* No person ought to have advantage from his own wrong.—*Jenk. Cent.* 161.

[2] Quoted by *Charles*, J., in Ponting *v.* Noakes, L. R. 2 Q. B. D. 1894, p. 285.

[3] An illustration of this occurs in the compulsory service of jurymen: that however great the private pecuniary loss, they must serve for the public weal.

Tort—*continued.*

third persons.—*Lord Kenyon*, C.J., Outram *v.* Morewood (1793), 5 T. R. 123.

See EVIDENCE, 29; MISTAKES, 1.

26. No tort is assignable, in law or equity. It is not within any species of action at common law.—*Yates*, J., Millar *v.* Taylor (1769), 4 Burr. Part. IV. 2386.

See TRANSFER OF RIGHT OF ACTION.

27. The Court would not endure that a mere form or fiction of law, introduced for the sake of justice, should work a wrong, contrary to the real truth and substance of the thing.—*Lord Mansfield*, Johnson *v.* Hargreaves (1760), 2 Burr. Part IV. 962.

See RELIEF, 3.

Trade Union.

Trade unions up to a certain point have been recognised now as organs for good. They are the only means by which workmen can protect themselves from the tyranny of those who employ them. But the moment that trade unions become tyrants in their turn, they are engines for evil: they have no right to prevent people from working on any terms that they choose.—*Lindley*, J., Lyons & Sons *v.* Wilkins (1896), 74 L. T. Rep. (N. S.) 364. See also Mogul Steamship Co. *v.* MacGregor, Gow, & Co., 66 L. T. Rep. (N. S.) 1; Temperton *v.* Russell and others, 69 L. T. Rep. (N. S.) 78.

Transfer of Right of Action.

It was the policy of the common law to forbid the transfer of rights of action. If this were not forbidden men would often pay the debts of others and bring actions upon them to the great increase of litigation. —*Heath*, J., Scholey *v.* Daniel (1801), 1 Bos. & Pull. 541.

See TORT, 26; LITIGATION, 2.

Trespass.

1. The house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose.[1]—*Lord Coke*, Semayne's Case (1605), 3 Rep. 186.

See PROPERTY, 13; PROTECTION, 2.

2. By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my

[1] For a man's house is his castle, *Et domus sua cuique tutissimum refugium.*—*Co.* 3rd pt. ins. 162.

Trespass—*continued.*

ground without my licence, but he is liable to an action, though the damage be nothing.[1]—*Camden*, L.C.J., Entick *v.* Carrington (1765), 19 How. St. Tr. 1066.

See JUDGES, 27; JUSTICE, 3; LAW, 32; PUBLIC SERVANT, 3; PUNISHMENT, 6; RIGHTS, 4; TORT, 5, 7, 19.

3. Though it is not always of necessity, nor perhaps here, to go upon the original foundation of a right of law, yet I will beg leave to observe, when we apply the maxim, that every man's house is his castle, we mean not to persuade the inhabiter of a poor hut, that it is provided with draw-bridges or portcullises, but only that it is under such sufficient protection as may provide for his security in a more pleasant, or perhaps, a better way—that it is fortified by the law.[2]—*Lord Mansfield*, Lee *v.* Gansell (1774), Lofft. 378.

Trial for Life.

1. Yea, such is the law of England, the tenderest law in the world of a man's life. I say again, that no such trial for life is to be found in the world, as in England. In any place but in England, a man's life may be taken away upon two or three witnesses; but in England two or three witnesses do not do it: For there are two juries besides, and you have four-and-twenty men returned; you have one-and-twenty men upon their oaths and consciences that have found you guilty: And yet when you have done that, it is not enough by the law of England, but you are also to have twelve rational understanding men of your neighbours to hear all over again, and to pass upon your life. This is not used in any law in the world but in England, which hath

[1] This springs from the famous maxim, *Ubi jus ibi remedium.* — *Ashby* v. *White*, 1 Sm. L. C. 1. See Broom's "Legal Maxims." It is because every man's house is his castle that a trespasser may be personally ejected, and moderate violence even be used if necessary; also that a sheriff in civil process cannot break doors, &c. See also Hodder *v.* Williams, L. R. 2 Q. B. D. 1895, p. 663; Foster's "Discourse of Homicide," 319, 320; Sm. L. C., 8th ed. 126.

"The rule that every man's house is his castle, when applied to arrests on legal process, has been carried as far as political justice will warrant; and perhaps farther than the scale of reason and sound policy this will warrant. In the case of life, as we have before hinted generally,—but in the case of life more particularly,—this privilege, and the maxim which supports it, will admit of no extension. It must be confined to breaking the outer door, or window, for the protection of the family, and security from without; and it belongs to those whose domicile it is; for it is not the sanctuary of a stranger. And when a man escapes from the arrest, he is not privileged by his house."—*Foster*, tit. Hom. c. 8, § 20.

Whenever a person has any authority by law to do any particular act, and he abuses that authority, he makes himself a trespasser *ab initio.*—*The Six Carpenters' Case*, 8 Rep. 146; *Reed* v. *Harrison*, 2 Bl. Rep. 1218. See also 11 Geo. II. c. 19; Taylor *v.* Cole, 3 T. R. 292. *See also* PUBLIC SERVANT, 3, *antè*, p. 214.

[2] *Similem habemus Demosthenis præstantissimum & notissimum locum.*

Trial for Life—*continued.*

the most righteous and most merciful law in the world.[1]—*Lord Keble*, C.J., Lilburne's Case (1649), 4 How. St. Tr. 1311.

See ADMINISTRATION OF JUSTICE, 32; CRIMINAL JUSTICE, 31, 49; EVIDENCE, 10, 29, 30; JUDGES, 76; JURY, 16, 22, 26; LAW, 18, 47, 48.

2. *Scroggs*, L.C.J.—My rule is this, in doubtful cases, when men are upon their lives, I had rather hear what is impertinent, than not let them make a full defence.

North, L.C.J.—I had rather hear things at a venture, than forbid things at a venture.

—Whitehead's Case (1679), 7 How. St. Tr. 388.

See above, 1.

Truth.

1. Truth is the same in all persuasions.—*Jefferies*, C.J., Titus Oates' Case (1685), 10 How. St. Tr. 1262.
2. Truth and falsehood, it has been well said, are not always opposed to each other like black and white, but oftentimes, and by design, are made to resemble each other so as to be hardly distinguishable; just as the counterfeit thing is counterfeit because it resembles the genuine thing.—*Cleasby*, B., Johnson *v.* Emerson (1871), L. R. 6 Ex. Ca. 357.

See below, 3; COMMERCE, 4.

3. There are various kinds of untruth. There is an absolute untruth, an untruth in itself, that no addition or qualification can make true: as, if a man says a thing he saw was black, when it was white, as he remembers and knows. So, as to *knowing* the truth. A man may know it, and yet it may not be present in his mind at the moment of speaking; or, if the fact is present to his mind, it may not occur to him to be of any use to mention it. For example, suppose a man was asked whether a writing was necessary in a contract for the making and purchase of goods, he might well say "Yes," without adding that payment on receipt of the goods, or part, would suffice.

[1] *Jefferies*, L.C.J.: Come Mr. Attorney, if in cases of common actions for words there be such strictness required, ten times more ought there to be in an indictment of treason, where a man's life, and all, is so much concerned. I am not satisfied, I assure you, that this indictment is well laid, though I give no opinion; but in all justice we ought to assign him counsel to make out his objection.

Att.-Gen.: All this, my lord, is only in delay.

Jefferies, L.C.J.: Mr. Attorney, "*de vita hominis nulla est cunctatio longa.*" I think we ought to assign him counsel, and the rest of my brothers are of that opinion too.—*Rosewell's Case* (1684), 10 How. St. Tr. 264. *See also* for meaning of "brothers," *antè*, JUDGES, 55, *n.*

Truth—*continued.*

He might well think that the question he was asked was whether a contract for goods to be made required a writing like a contract for goods in existence. If he was writing on the subject, he would, of course, state the exception or qualification.—*Lord Bramwell*, Derry *v.* Peek (1889), L. R. 14 Ap. Cas. 348.

See above, 2; CONTRACT, 6.

4. The interests of truth and justice must be allowed to prevail.[1]—*Erle*, C.J., Bartlett *v.* Lewis (1862), 12 C. B. (N. S.) 249.

5. Truth is the thing that we are enquiring after; and this is the thing we would have prevail, and I hope shall in all cases.—*Pollexfen*, L.C.J., Sir Richard Grahme's Case (1691), 12 How. St. Tr. 799.

6. Ingenuity is one thing, and simple testimony another, and plain truth, I take it, needs no flowers of speech.[2]—*Lord Mansfield*, Wilkes *v.* Wood (1763), 19 How. St. Tr. 1176.

See FRAUD, 27; MISCELLANEOUS, 19.

7. We live in an age, when truth passes for nothing in the world, and swearing and foreswearing is taken for a thing of course. *Had his zeal been half so much for truth as it was for falsehood, it had been a commendable zeal.*[3]—*Jefferies*, L.C.J., Case of Braddon and another (1684), 9 How. St. Tr. 1198.

See FRAUD, 27; MISCELLANEOUS, 2, 12.

8. Every one disguising the truth from a man who has a right to the truth is wrong, and ought not to be encouraged.—*Burnett*, J., Chesterfield *v.* Janssen (1750), 2 Ves. 125.

See COMMERCE, 4; CONTRACT, 2; EQUITY, 38; FRAUD, 14, 16, 27; INTERROGATORIES; JUDGES, 48, *n.*; MISCELLANEOUS, 11; TORT, 3, 5, 16; WITNESS, 4.

9. God forbid the truth should be concealed any way.—*Wright*, L.C.J., Trial of the Seven Bishops (1688), 12 How. St. Tr. 310.

10. Fiction is never admitted where truth may work.—*Hobart*, C.J., Wright *v.* Gerrard (1617), Lord Hobart's Rep. 311.

11. Ay, ay, let truth come out, in God's name.—*Jefferies*, C.J., Lady Ivy's Case (1684), 10 How. St. Tr. 582.

See antè, BLASPHEMY.

[1] "Great is truth, and mighty above all things."—I *Esdras*, iv., 41. From this biblical saying we have the origin of the maxim, *Magna est veritas, et prævalebit.*

[2] "Plain truth, dear Murray, needs no flowers of speech."—*Pope's* "Imitation of Horace," Bk. I., Ep. 6.

[3] See also *per Willes*, J., in regard to the admissibility of certain evidence of confession in Reg. *v.* Reeve and another (1872), L. R. Crown Cas. Res., Vol. I., 363: "It seems to have been supposed, at one time, that saying, 'Tell the truth' meant, in effect, 'Tell a lie.'"

Truth—*continued.*

12. Truth, like all other good things, may be loved unwisely—may be pursued too keenly—may cost too much.[1]—*Knight-Bruce*, V.-C., Pearse *v.* Pearse (1846), 1 De Gex & Sm. 28, 29.

13. We know that passion, prejudice, party, and even good-will, tempt many who preserve a fair character with the world to deviate from truth in the laxity of conversation.[2]—*Lawrence*, J., Berkeley Peerage Case (1811), 4 Camp. Rep. 411.

See Criminal Justice, 23; Liberty of the Press, 1; Miscellaneous, 40, 54; Motives, 7; Politics, 8; Sovereignty, 10.

Universities.

1. Fellows of colleges in the universities are in one sense the recipients of alms, because they receive funds which originally were of an eleemosynary character.—*Lord Coleridge*, C.J., Harrison *v.* Carter (1876), L. R. 2 Com. Pl. D. 36.

2. I shall be as tender of the privileges of the University of *Oxford* as any man living, having the greatest veneration for that learned body.[3] —*Willes*, L.C.J., Welles *v.* Trahern (1740), Willes' Rep. 241.

See below, 3; Miscellaneous, 5.

3. Two universities have been founded in this country, amply endowed and furnished with professors in the different sciences; and I should be sorry that those who have been educated at either of them should undervalue the benefits of such an education.—*Lord Kenyon*, C.J., King *v.* The College of Physicians (1797), 7 T. R. 288.

See above, 2; Schoolmaster, 4; Inns of Court, 3.

Usage.

1. No degree of antiquity can give sanction to a usage bad in itself.—*Lord Mansfield*, Case of John Money and others (1765), 19 How. St. Tr. 1027.

See Law, 20.

2. Rights of every kind, which stand upon the foot of usage, gradually receive new strength in point of light and evidence from the continuance of that usage; as it implieth the tacit consent and approbation

[1] *Veritas nihil veretur nisi abscondi:* Truth fears nothing but concealment.—9 *Co.* 20.

[2] "There are cases when the simple truth is difficult to tell,
When 'tis better that the truth should not be known,
So we'd better leave her lying at the bottom of the well,
And agree to let both truth and well alone."

[3] I should have all manner of tenderness for the right of the College; they are nurseries of Religion and Learning, and therefore all donations for increase and augmentation of their revenue are to be liberally expounded.—*Cowper*, L.C., Devit *v.* College of Dublin (1720), Gilbert Eq. Ca. 248.

Usage—*continued.*

of every successive age, in which the usage hath prevailed. But when the prerogative hath not only this tacit approbation of all ages, the present as well as the former on its side, but is recognised, or evidently presupposed, by many Acts of Parliament, I see no legal objection that can be made to it.[1]—*Foster*, J., Case of Alexander Broadfoot (1742), Foster's Rep. 179.

See below, 11; RIGHTS, 1.

3. Private customs, indeed, are still to be sought from private tradition. —*Camden*, J., Case of Seizure of Papers (1765), 19 How. St. Tr. 1068.
4. Proof of the usage of a large capital such as *London*, is sufficient to show that of the whole world unless it is contradicted.—*Kekewich*, J., Williams *v.* Colonial Bank (1887), L. R. 36 C. D. 670.
5. The custom of the city of London is a matter of fact.—*Denison*, J., Rex *v.* Davis (1758), 1 Burr. Part IV. 641.

See SHERIFF, 2.

6. We shall go according to the constant usage within memory.[2]— *Jefferies*, C.J., Sacheverell's Case (1684), 10 How. St. Tr. 72.
7. You say it was in the Saxons' time; you do not come to any time within 600 years; you speak of those times wherein things were obscure.—*Lord Bridgman*, C.B., Scot's Case (1660), 5 How. St. Tr. 1066.
8. In many cases a party undertakes to prove a custom from the time of legal memory, the reign of *Richard* the Second; but that proof is generally established by evidence of acts done at a much later period, and frequently no evidence is given beyond the present century.— *Lord Kenyon*, C.J., Withnell *v.* Gartham (1795), 6 T. R. 397.

See LAW, 20.

9. There can be very few cases, where a custom has been sufficiently proved, in which a Court could hold that it was unreasonable, for that it must be convenient is shown by the fact that it has been established and followed.—*Channell*, J., Moult *v.* Halliday (1897), L. R. 1 Q. B. D. 130.
10. I cannot draw a distinction as to what length of time will render a practice legal.—*Dallas*, C.J., Butt *v.* Conant (1828), Gow's Rep. 95.
11. I know not how or where to ascertain when an usage becomes of age. —*Dallas*, C.J., Keyser *v.* Suse (1828), Gow's Rep. 65.

See 2, *above.*

[1] As usage is a good interpreter of the laws, so non-usage, where there is no example, is a great intendment that the law will not bear it.—*Lord Litt.* sec. 180, *Co. Litt.* f. 81.

[2] Time whereof the memory of man runneth not to the contrary.—*Bl. Comm.* Bk. I., sec. 3, p. 45.

Usage—*continued.*

12. If the custom be general, it is the law of the *realm*: if local only, it is *lex loci*, the law of the place. Now, all laws are general, as far as the law extends; and all customs of England are of course, immemorial.[1] No usage, therefore, can be part of that law, or have the force of a custom, that is not immemorial.[2]—*Yates*, J., Millar *v.* Taylor (1769), 4 Burr. Part IV. 2368.
13. Whatever may be the effect of the prevailing fashions of the times, I do not think that the argument of inconvenience, arising out of those fashions, can at any time be relied upon against a current of decisions.—*Lord Eldon*, C.J., Beard *v.* Webb (1800), Bos. & Pull. Rep. 109.

See JUDGES, 13, 66; LAW, 26, 45; STATUTES, 4, 7.

14. All customs must be supposed to have had a good commencement, unless they appear to be inconsistent or against reason.—*Per Cur.*, Burton *v.* Wileday (1737), Andrews' Rep. 39.
15. Customs which are consistent may be pleaded against each other.—*Buller*, J., Ball *v.* Herbert (1789), 3 T. R. 264.

See PLEADINGS, 9.

Usury.

1. Jewish usury was prohibited at common law, but no other.[3]—*Hale*, C.B., Anonymous (1665), Hard. 420.
2. The true spirit of usury lies in taking an unjust and unreasonable advantage of their fellow creatures.—*Burnett*, J., Earl of Chesterfield *v.* Janssen (1750), 2 Ves. Sen. 141.

See FRAUD, 4, *n.*; MISCELLANEOUS, 10, 19, 47.

Virtue.

1. A difficult form of virtue is to try in your own life to obey what you believe to be God's will.—*Lord Coleridge*, Reg. *v.* Ramsey (1883), 1 Cababé and Ellis's Q. B. D. Rep. 145.
2. Persecution is a very easy form of virtue.—*Lord Coleridge*, Reg. *v.* Ramsey (1883), 1 Cababé and Ellis's Q. B. D. Rep. 145.

Voting.

Let all people come in, and vote fairly; it is to support one or the other

[1] See 2 & 3 Will. IV. c. 71, s. 5.

[2] *Modus et conventio vincunt legem*: Custom and agreement overrule law.—2 *Co.* 73.

[3] According to Lord Coke, all usury is unlawful.—2 *Inst.* 89; 3 *Inst.* 151.

Voting—*continued.*

party, to deny any man's vote.—*Holt*, C.J., Ashby *v.* White (1703), 2 Raym. Rep. 958.

See FREEDOM OF SPEECH; LIBERTY OF THE PRESS, 9; LIBERTY OF THE SUBJECT, 5; MINORITIES; POLITICS, 7, 8.

War.

Modern civilization has introduced great qualifications to soften the rigours of war; and allows a degree of intercourse with enemies, and particularly with prisoners of war, which can hardly be carried on without the assistance of our Courts of justice. It is not therefore good policy to encourage these strict notions, which are insisted on contrary to morality and public convenience.—*Eyre*, C.J., Sparenburgh *v.* Bannatyne (1797), 2 Bos. & Pull. 170.

Will.

1. There is no instance where men are so easily imposed upon, as at the time of their dying under the pretence of charity.[1]—*Cowper*, L.C., Att.-Gen. *v.* Barnes *et uxor* (1707), Gilbert Eq. Ca. 5.
2. Of all the cases which come before the Court for its decision, none can be more embarrassing and more unsatisfactory than those which arise upon the construction of wills. The Court has no real guide to enable it to arrive at a conclusion. The only things which can be called guides are certain rules which the Court has laid down, and which may be extracted from the decisions. Beyond that, the decisions are not of the slightest use. Except by adherence to those rules, there is nothing but what may, not irreverently, be called guessing as to what the words of the document can be held to mean.[2]—*Sir James Bacon*, V.-C., *In re* Ingle's Trusts (1871), L. R. 11 Eq. Ca. 586.

See LAW, 28, *n.*

[1] In the state of languor in which dying persons generally are, their assent could be easily got to statements which they never intended to make, if they were but ingeniously interwoven by an artful person with statements which were actually true.—*R.* v. *Fitzgerald*, Ir. Cir. R. 168, 169.

A will is often executed suddenly in a last sickness, and sometimes in the article of death . . . consequently the time of the execution is the critical moment which requires guard and protection.—*Lord Camden*, Doe d. Hindson *v.* Hersey, 4 Burn's Ecc. L. 27; 1 Jarman on Wills, 70.

[2] This seems to me to be one of those cases in which the Court is bound to arrive at a conclusion without having any satisfactory means of arriving at it. The only guide I have is this. I am entitled to sit in the testator's chair as he wrote his own will.—*Kekewich*, J., Horlock *v.* Wiggins (1888), L. R. 39 C. D. 143. *See also antè*, PLEADINGS, 7; WORDS, 5, *suprà*.

As lawyers we must construe the will like any other document.—*Cotton*, L.J., Ralph *v.* Carrick (1877), L. R. 5 Ch. 984. See also *per Lindley*, L.J., *In re* Morgan (1893), L. R. 3 Ch. 228; *id.* M.R., *In re* Birks, *In re* Kenyon *v.* Birks (1899), L. R. 1 C. D., C. A. 419.

Will—*continued.*

3. The law has ever been watchful and jealous of wills made under religious influences, and especially so when those influences connect themselves with any individual who is the object of the testator's bounty.—*Sir J. P. Wilde,* Smith *v.* Tebbitt (1867), L. R. 1 Pr. & D. 437.

4. I regret exceedingly that, not only ordinary laymen, but, as it seems to me, professional men, do not understand the great difficulty there is in drawing wills, and do not bestow a little more care and pains in endeavouring to draw them in such a way as that the numerous questions which often arise on them should be avoided. I regret to say that these questions often throw a great deal of expense on parties interested under the wills, and are the cause of great heartburnings and most bitter animosities.—*Pearson,* J., *In re* Wait; Workman *v.* Petgrave (1885), L. R. 30 C. D. 622.

See Conveyance, 2; Property, 2.

5. I quite admit that on the question of the construction of wills relating to real property the cases have always had greater attention given to them than in the case of personalty, because land in *England* passes by title, and it has always been the habit of the lawyers and Judges to look with greater strictness to the reported cases where it is a question of land than where it is a question of personalty.—*Chitty,* J., *In re* Bright-Smith; Bright-Smith *v.* Bright-Smith (1886), L. R. 31 C. D. 318.

See Property, 2.

6. Speaking for myself, I do not look upon wills as Chinese puzzles; they no doubt do present great difficulties, but I do not feel myself the serious difficulty which other learned Judges have.—*Chitty,* J., *In re* Roper's Estate (1889), L. J. Rep. (N. S.) 58 C. D. 442.

See Words, 5.

7. The Court is at liberty to transpose and mould clauses and words in a will so as to make the whole take effect.—*Buller,* J., Doe *v.* Wilkinson (1788), 2 T. R. 223.

See below, 11; Construction, 10, 18, 30.

8. If we find from a will, as we do here, that a testator has used a word in a particular sense, we must give it that meaning wherever it occurs in the will. It is the same thing as if a foreign word were used—a case of which I have known. In such a case we have to get at the meaning of the word in English from an ordinary dictionary, and then whenever it occurs give it that English meaning. Of course, the dictionary must be clear; and if we cannot make out what the testator

Will—*continued.*

meant, then we have not got the dictionary.—*Sir F. H. Jeune, Re* Birks; *In re* Kenyon *v.* Birks (1899), L. R. 1 C. D., C. A. 419, 420.

See ADMINISTRATION OF JUSTICE, 11; CASES, 15; CONSTRUCTION, 3, 4, 20, 21, 25, 31; JUDGES, 62, 65; LAW, 65; STATUTES, 15, 19; WORDS, 6.

9. No previous will can be treated properly as a precedent for another which is expressed in different language, and no decision on the precise words of a former will can as a general rule be of the least service in guiding the Court as to the construction of other words. Unless you can get a principle from a case which is applicable generally to other cases, the precedent is of little use.[1]—*Rigby*, L.J., *In re* Macduff (1896), L. R. 2 Ch. D. [1896], p. 469.

See 12, *below;* CASES, 21; CONSTRUCTION, 29.

10. Let a will be ever so fair, a slip in form is fatal: which is a certain mischief. But if a will be fraudulent, though it is allowed to be formal, it may be set aside upon evidence and circumstances.—*Lord Mansfield*, Windham *v.* Chetwynd (1757), 1 Burr. Part IV. 423.

See CONSTRUCTION, 2, 8, 10; STATUTES, 13.

11. My distinction is, that in incorrect wills the Court may take liberties, but that if the words are correct they have no power to make any alteration.—*Buller*, J., Doe *et dem.* Dacre *v.* Dacre (1798), 2 Bos. & Pull. 260.

See above, 7.

12. Every will stands on its own bottom and is various as anything whatsoever, and therefore it is hard to cite a case that can quadrate. I have mean thoughts of my own opinion. I may say in this case, *difficilius est invenire quam vincere*, as *Cæsar* said when he and his army ran about the *Alps* to find out a way.—*Treby*, C.J., Monnington *v.* Davis (1695), Fortescue, 227.

See 9, *above.*

13. Men should not sin in their graves.[2]—*Sir John Strange*, Thomas *v.* Britnell (1751), 2 Ves. 314.

See PROPERTY, 2.

[1] I do not intend to encumber myself with cases. Decisions upon other words something like those in question, in other wills, where the whole context of those other wills must be gone into, can afford very little assistance.—*Eyre*, C.J., Doe *et dem.* Dacre *v.* Dacre (1798), 2 Bos. & Pull. 258.

I do not see why, if we can tell what a man intends, and can give effect to his intention as expressed, we should be driven out of it by other cases or decisions in other cases. I always protest against anything of the sort.—*Lindley*, L.J., *In re* Morgan (1893), 3 Ch. 228.

We must find out the meaning of the testator as well as we can.—*Powell*, J., Monnington *v.* Davis (1695), Fortescue, 226.

[2] Observation upon the construction of a will.

Will—*continued.*

14. Technical rules are not to be relied upon in explaining the intention of testators: and yet cases of intention are much embarrassed by authorities.—*Eyre*, C.J., Burnsall *v.* Davy (1798), 2 Bos. & Pull. 220.
See CASES, 19, 21; CONSTRUCTION, 4, 15, 16, 21.

15. Courts of justice ought to carry into effect the intentions of testators as far as they can consistently with the rules of law.—*Lord Langdale*, M.R., Biederman *v.* Seymour (1841), 3 Beav. 371.
See 17, 18, *below*; CONSTRUCTION, 25, 31.

16. It is from the words, and from the context, not from the punctuation, that the sense must be collected. — *Sir Wm. Grant*, M.R., Sanford *v.* Raikes (1816), 1 Mer. 651; *per Lord Westbury*, Gordon *v.* Gordon (1871), L. R. 5 H. L. 276.
See CONSTRUCTION, 30; STATUTES, 12.

17. The intention of the testator is the polar star by which we must be guided.—*Buller*, J., Smith *v.* Coffin (1795), 2 Hen. Bl. 444; *id.* *Tindal*, L.C.J., Wilce *v.* Wilce (1831), 5 M. & P. 694.
See 15, *above*.

18. The Court is to pronounce according to the apparent intent of the testator, but that intent must be found in the words of the will, and is not to be collected by conjecture *dehors* the will.[1]—*Buller*, J., Doe *et dem.* Dacre *v.* Dacre (1798), 2 Bos. & Pull 259.
See ADMINISTRATION OF JUSTICE, 10; CONSTRUCTION, 8.

Witness.

1. Witnesses may lie, either be mistaken themselves, or wickedly intend to deceive others . . . but . . . circumstances cannot lie.[2]—

[1] Speaking of Sir Richard Arden, Master of the Rolls (afterwards Lord Alvanley), on the painful necessity which his duty as an equity Judge imposed upon him, of cutting knots that no subtlety could untie, and interpreting meanings which the unskilful persons who used them, from the mistaken adaptation of legal words, and their inartificial handling of the terms of art, would have found it difficult to explain, it is observed that he would not unfrequently dilate with much force and feeling. "I am, at last," he would say, "under the very disagreeable necessity of giving judgment upon a case, in which the judgment cannot be satisfactory to the Court, and by which I must be sure I am not performing the intention. The testator, it appears, must have totally forgotten the whole state of his property." — *Townsend*, "Lives of Twelve Eminent Judges," Vol. 1, 149. On one occasion the counsel said, that it was the duty of the Court to find out the meaning of the testator. "My duty, sir, to find out his meaning!" exclaimed Lord Alvanley. "Suppose the will had contained only these words, '*Fustum funnidos tantaraboo.*' Am I to find out the meaning of his gibberish?"—*Id.* n. *See also antè*, ADMINISTRATION OF JUSTICE, 15; MISCELLANEOUS, 20.

[2] These words have oftentimes been repeated from the Bench as almost to have become a judicial axiom; but, observes a learned writer (*Taylor on Evid.*, s. 66, p. 86, Vol. I), "No proposition can be more false or dangerous. If 'circumstances' mean—and they have no other meaning—those facts which lead to the inference of the fact in issue, they not only can, but constantly do, lie, in

Witness—*continued.*

Mounteney, B., Annesley *v.* Lord Anglesea (1743), 17 How. St. Tr. 1430. See also *per Legge*, B., R. *v.* Blandy (1752), 18 How. St. Tr. 1186, 1187.

See EVIDENCE, 12, 32.

2. I will not say that a witness shall not be asked to what may tend to disparage him: that would prevent an investigation into the character of the witness, which may often be of importance to ascertain. I think those questions only should not be allowed to be asked which have a direct and immediate effect to disgrace or disparage the witness. —*Lord Alvanley*, Macbride *v.* Macbride (1805), 4 Esp. 242.

See ADMINISTRATION OF JUSTICE, 5; CHARACTER, 2, 4; CRIMINAL JUSTICE, 2, 4, 16; EVIDENCE, 8, 14; PLEADINGS, 12; REPUTATION.

3. Whether witnesses are material or not, does not depend upon the result, but upon this, whether a prudent attorney, having a due regard for the interests of his client, would have brought them.—*Erle*, C.J., Dods *v.* Evans (1864), 15 C. B. (N. S.) 627.

See EVIDENCE, 29.

4. Generally speaking, a witness has no business to concern himself with the merits of the case in which he is called on to give evidence or whether, when given, it will be material to the cause.—*Lord Langdale*, M.R., Langley *v.* Fisher (1843), 5 Beav. 447.

See FRAUD, 27; JURY, 26; TRUTH, 8.

5. There is no reason for assuming, that the time of medical men and attornies is more valuable than that of others whose livelihood depends on their own exertions.[1]—*Tindal*, C.J., Lonergan *v.* The Royal Exchange Assurance (1831), 9 Bing. 731.

Woman.

1. A woman's notes will not signify much truly, no more than her tongue. —*Scroggs*, L.C.J., Trial of Richard Langhorn (1679), 7 How. St. Tr. 437.

2. A woman cannot be a pastor by the law of God.[2] I say more, it is

the sense that the conclusion deduced from them is false." As an illustration of this, he cites the incident of the viper fastening itself on the hand of St. Paul, when the Apostle was shipwrecked on the island of Melita. "No doubt," said the barbarians when they saw this, "this man is a murderer"; but when they saw no harm came to him they changed their minds and said he was a god, "and," says Taylor, "both conclusions were alike false."

[1] This remark is in relation to the payment of witnesses, *i.e.* persons in the professions and surveyors or engineers or other scientific men.

[2] See I. *Cor.* 14, 34; I. *Tim.* 2, 11, 12. By the custom of the ancient Britons "women had prerogative in deliberative sessions touching either peace-government, or martial affairs." — *Selden's Works*, Vol. 3, p. 10, cited in Chorlton *v.* Lings (1868), L. R. 4 C. P. 389. Coming

Woman—*continued.*

against the law of the realm.—*Hobart*, C.J., Colt and another *v.* Bishop of Coventry and Lichfield (1612), Hob. Rep. 148.

Words.

1. There is no magic in words.—*Lord Kenyon*, King *v.* Inhabitants of North Nibley (1792), 5 T. R. 24; *Lord Romilly*, Lord *v.* Jeffkins (1865), 35 Beav. 16.

   See CONVEYANCE, 1; MAGIC.

2. Most of the disputes in the world arise from words.[1]—*Lord Mansfield*, Morgan *v.* Jones (1773), Lofft. 177.

3. Rather commend yourself by your actions, than your expressions; one good action is worth twenty good expressions.—*Jefferies*, C.J., Braddon and Speke's Case (1684), 9 How. St. Tr. 1185.

   See below, 8; LAW, 25.

4. Words pass from men lightly.[2]—Quoted by *Wilmot*, J., Pillans *v.* Van Mierop (1764), 3 Burr. Part IV. 1671.

   See JUSTIFICATION, 2.

5. The words are like Jack in a Box, and nobody knows what to make of them.—*Roll*, C.J., Parker *v.* Cook (1650), Style's Rep. 241.

   See CONSTRUCTION, 31, 32; JUDGES, 12; LAW, 28; WILL, 2, *n.*, 6.

6. Is not the Judge bound to know the meaning of all words in the English language; or if they are used technically or scientifically, to *inform his own mind* by evidence, and then to determine the meaning?—*Martin*, B., Hills *v.* The London Gaslight Co. (1857), 27 L. J. Ex. 63.

   See JUDGES, 1; WILL, 8.

to Saxon times we find it stated "All fiefs were originally masculine, and women were excluded from the succession of them because they cannot keep secrets." — *West's Inquiry into the manner of creating Peers*, 44, cited 7 Mod. 272. Although it is uncouth in our law to have women justices and commissioners and to sit in places of judicature, yet by the authorities this is a point worth insisting upon, both in human and divine learning; for in the first commission ever granted (Genesis i., 28), by virtue of the word *dominamini* in the plural, God coupled the women in the commission with man. (Callis (1685), 250.) The policy of the law thought women unfit to judge of public things, and placed them on a footing with infants; by 7 & 8 Will. III. c. 25, infants cannot vote, and women are perpetual infants. — *Per Strange*, Sol.-Gen., 7 Mod. 272. Under our present political system, the legislative, executive, and judicial functions of the Government under a Queen regnant are carried on in the name of a woman: "Her Majesty, &c., enacts," or "commands," &c.; yet women, because of their sex, are said to be "disqualified by the common law" from having any voice or representation in the process of legislation or government. *See also antè*, STATUTES, 5, *n.*

[1] *Vide* "Essay on Human Understanding," c. 9, 10, 11.

[2] *Plowden*, 308 b.

Quæ ad unum finem loquuntur sunt, non debent ad alium detorqueri: Those words which are spoken to one end, ought not to be perverted to another. — 4 *Co.* 14. "Nay, gentlemen, do not quarrel about words."—*Wright*, L.C.J., Trial of the Seven Bishops (1688), 12 How. St. Tr. 208.

Words—*continued.*

7. He says one thing, but he does another; it seems to me to be common sense to look at what is done, and not to what is said.[1]—*Martin*, B., Caine *v.* Coulson (1863), 1 H. & C. 764; 32 L. J. Ex. 97.

See MISCELLANEOUS, 40; MOTIVES, 10; PLEADINGS, 5.

8. We must judge of men's intentions by their acts, and not by expressions in letters, which are contrary to their acts.—*Lord Abinger*, Chapman *v.* Morton (1843), 11 M. & W. 534.

See above, 3; MISCELLANEOUS, 58; MOTIVES, 2; TORT, 16.

9. Words are transient, and vanish in the air as soon as spoken, and there can be no *tenor* of them . . . but when a thing is written, though every omission of a letter may not make a variance, yet, if such omission makes a word of another signification, it is fatal.[2]—*Holt*, C.J., Queen *v.* Drake (1706), 3 Salkeld, 225.

See CONSTRUCTION, 30, 32.

[1] *Acta exteriora indicant interiora secreta.*—8 *Rep.* 291.

"Deeds, not words."—*Butler*, "Hudibras," Part I., c. 1.

"Words are women, deeds are men."—*Herbert*, "Jacula Prudentum."

[2] "But words are things; and a small drop of ink,
Falling, like dew, upon a thought, produces
That which makes thousands, perhaps millions, think."
—*Byron*, "Don Juan," Canto III. st. 88.

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liberty of the. *See* "Commerce," 3; "Contempt of Court"; "Liberty of the Press."
mendax infamia. See "Judges," 82, *n.*
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PRESSING. *See* "Navy," 7.

PRESUMPTION. *See Text, infrà. See also* "Character," 3; "Criminal Justice," 8; "Diligence," 2; "Illegality"; "Law," 14, 46, *n.*; "Limitation," 1, *n.*; "Magistrates," 4, 5; "Motives," 8; "Practice," 32; "Precedents," 9.

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PRIVATE—*continued.*
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reasons of. *See* "Politics," 4.
the. *See* "Government"; "Liberty of the Subject," 5.

STATEMENT. *See* "Evidence."

STATESMAN. *See* "Parliament," 13.

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direct opinion as to obscure. *See* "Administration of Justice," 9.
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STATUTES. *See Text.*
increase in. *See* "Parliament," 3, *n.*
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STEREOTYPED RULES. *See* "Text Books," 4.

STOPS. *See* "Statutes," 12.

STRAIGHT LINE. *See* "Miscellaneous," 37.

STRAINING THE LAW. *See* "Law," 40.

STRANGER. *See* "Money," 2.

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SUBJECT,
fellow. *See* "Scotland," 1.
liberty of the. *See* "Construction," 7; "Freedom of Speech"; "Liberty of the Subject."
of the Queen. *See* "Liberty of the Press," 11; "Navy," 6.
Protestant. *See* "Ecclesiastical," 3.
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SUBORDINATE OFFICER. *See* "Navy," 8.

SUBORDINATES. *See* "Schoolmaster," 1.

SUBPŒNA. *See* "Morals," 2.

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civil and criminal. *See* "Courts," 7.
law. *See* "Litigation."
limitation of. *See* "Limitation," 1.
motive for. *See* "Motives," 12.

SUITOR. *See* "Pleadings," 11; "Precedents," 4, 5, 12; "Public Servant," 5; "Sovereignty," 9.

SUMMARY PROCEEDINGS. *See* "Magistrates," 2.

SUMMING UP. *See* "Judges," 70, *n.*; "Jury," 18.

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SUNDAY. *See Text. See also* "Day."

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Court. *See* "Magistrates," 3, 4, 7.
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SWEARING IN COURTS OF JUSTICE. *See* "Courts," 3, *n.*; "Criminal Justice," 20.
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TAXATION. *See* "Navy," 7, *n.*

TAXING MASTER. *See* "Practice," 33.

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TESTIMONY, SIMPLE. *See* "Truth," 6.

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THURLOW, LORD, UPON PRINCIPLES OF HONOUR. *See* "Administration of Justice," 16.

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TIMES,
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TITLE. *See Text. See also* "Ejectment," 1; "Presumption," 8; "Statutes," 12; "Will," 5.
to action. *See* "Tort," 9.

TOMB. *See* "Property," 10.

TONGUE. *See* "Religion," 2; "Woman," 1.

TORT. *See Text.* *See also* "Administration of Justice," 35; "Books," 1; "Christianity," 12, *n.*; "Commerce," 32; "Contract"; "Damages"; "Doctrine," 3; "Sovereignty," 2, *n.*

TORTURE OF LAWS. *See* "Law," 40, *n.*

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TRADE UNION. *See Text.*

TRADITION. *See* "Practice," 1; "Precedents," 9.

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legacies to. *See* "Courts," 1.
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See also "Miscellaneous," 26; "Parent and Child," 3; "Words," 7, *n.*

WORDS.
"*Ab inconvenienti.*" *See* "Construction," 23, *n.*; "Judges," 13.
"*Ab initio.*" *See* "Trespass," 2, *n.*
"*Absurdam est affirmare (re judicata) credendum,*" &c. *See* "Counsel," 8, *n.*
"*Abundans cautela non nocet.*" *See* "Judges," 16, *n.*
"A Chancellor's foot." *See* "Equity," 19, *n.*
"A comparative necessarily supposes a positive," &c. *See* "Miscellaneous," 38.
"*Acta exteriora indicant,*" &c. *See* "Words," 7, *n.*
"*Actus Dei nemini,*" &c. *See* "Miscellaneous," 12, *n.*; "Tort," 11, *n.*
"*Actus non facit reum nisi mens sit rea.*" *See* "Bankruptcy," 2.
"*Ad ea quæ frequentius accidunt jura adaptantur.*" *See* "Construction," 11, *n.*
"A defendant is entitled to put his back," &c. *See* "Pleadings," 7.
"A difficult form of virtue," &c. *See* "Virtue," 1.
"*Ad quæstionem juris non respondent juratores,*" &c. *See* "Jury," 2.
"*Ad quæstiones facti,*" &c. *See* "Jury," 2, *n.*
"*Æquitas sequitur legem.*" *See* "Equity," 1, *n.*
"A gentleman of Gray's Inn." *See* "Counsel," 1, *n.*; "Courts," 4, *n.*
"A gentleman of Lincoln's Inn." *See* "Counsel," 1.
"A gentleman of the long robe." *See* "Counsel," 1, *n.*
"A good name is better than precious ointment." *See* "Libel," 6, *n.*
"A legal fiction is always consistent with equity." *See* "Fiction," 2, *n.*
"*Aliquis non debet esse judex in propriâ causâ.*" *See* "Administration of Justice," 23, *n.*
"*Allegans contraria non est audiendus.*" *See* "Counsel," 23, *n.*
"*Allegans turpitudinem suam.*" *See* "Fraud," 31.
"All private mischiefs must be borne," &c. *See* "Navy," 7.
"A madman is like a man," &c. *See* "Punishment," 2, *n.*
"A man is not born a knave," &c. *See* "Miscellaneous," 18.
"A man should be able to consult his solicitor," &c. *See* "Solicitor and Client," 2.
"A man who does not speak when he ought," &c. *See* "Consent," 5, *n.*
"A man who has done one contemptible thing," &c. *See* "Miscellaneous," 47.
"A man who lives upon his own." *See* "Ejectment," 2.
"A man who sleeps upon his rights," &c. *See* "Diligence," 2.
"A mere evasion, colour, &c., to evade the law." *See* "Law," 15.
"An error as to a name," &c. *See* "Name," *n.*
"A new road, not an old one, often deceives the traveller." *See* "Miscellaneous," 27, *n.*
"*Anglicæ jura in omni casu libertatis,*" &c. *See* "Law," 47, *n.*
"*Annuo parliamento.*" *See* "Parliament," 2.
"An over-speaking Judge is a no well-timed cymbal," &c. *See* "Counsel," 13, *n.*

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"Any man who spends his income," &c. *See* "Money," 6.
"A party who seeks equity must do equity." *See* "Equity," 12.
"A people whom Providence has cast together," &c. *See* "Sovereignty," 5.
"A person having breakfast overnight," &c. *See* "Miscellaneous," 28.
"A person intends to do that which, &c., he does." *See* "Law," 41.
"*Apices litigandi.*" *See* "Costs," 2.
"A popular Judge is a deformed thing," &c. *See* "Judges," 26, *n.*
"A popular Judge is an odious, &c., character." *See* "Judges," 26.
"*À priori.*" *See* "Reasonable," 1.
"A pure, innocent hand does set forth," &c. *See* "Criminal Justice," 46.
"*Arbitrio domini res æstimari debet.*" *See* "Commerce," 19, *n.*
"*Argumentum ad hominem.*" *See* "Fraud," 36.
"A rock ahead that everybody knows." *See* "Title," 1.
"As sure as God is in Gloucester." *See* "Miscellaneous," 57.
"As the crow flies." *See* "Miscellaneous," 37.
"As the sun arising in the horizon," &c. *See* "Mischief," 3, *n.*
"As the wind blows." *See* "Judges," 73.
"*Astuti.*" *See* "Statutes," 13.
"As you sow, y' are like to reap." *See* "Miscellaneous," 17, *n.*, 41, *n.*
"*Auctoritates philosophorum, medicorum,*" &c. *See* "Foreign Law," 2, *n.*
"*Aucupia verborum sunt judice indigna.*" *See* "Judges," 12.
"*Audi alteram partem.*" *See* "Criminal Justice," 11, *n.*
"*Aut Cæsar aut Nullus.*" *See* "Miscellaneous," 61, *n.*
"A very ingenious attempt to drive a coach-and-four," &c. *See* "Statutes," 26.
"A very large order." *See* "Discovery," 4, *n.*
"A woman having a settlement," &c. *See* "Settlements," 3, *n.*
"A woman's notes will not signify much," &c. *See* "Woman," 1.
"Ay, ay, let truth come out," &c. *See* "Truth," 11.
"Beneath this starry arch," &c. *See* "Miscellaneous," 55.
"Better that ten guilty persons escape," &c. *See* "Criminal Justice," 32.
"Better that an individual," &c. *See* "Tort," 23.
"Between the prisons and graves of Princes," &c. *See* "Miscellaneous," 16.
"Between the stirrup and the ground," &c. *See* "Amendments," 8, *n.*
"*Bien mal acquis,*" &c. *See* "Miscellaneous," 47, *n.*
"Bind not the new statutes so to the common law," &c. *See* "Statutes," 25.
"Blessed is the mending hand." *See* "Amendments," 1, 4.
"Blowing hot and cold." *See* "Counsel," 23.
"*Boni judicis est, ampliare justitiam.*" *See* "Administration of Justice," 1, *n.*
"*Bonos mores est decorum.*" *See* "Morals," 1.
"*Brevi Manu.*" *See* "Contempt of Court," 6.
"But words are things," &c. *See* "Words," 9, *n.*
"Cæsar's wife." *See* "Judges," 2.
"*Casus omissus.*" *See* "Construction," 12.

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"Catching at words," &c. *See* "Judges," 12.
"*Causa proxima.*" *See* "Motives," 13.
"*Causa proxima, non remota spectatur.*" *See* "Motives," 13, *n.*
"Caution is better than cure." *See* "Punishment," 3, *n.*
"*Caveat emptor.*" *See* "Christianity," 12, *n.*
"Certainty is the mother of quiet." *See* "Mischief," 1.
"Chicane." *See* "Costs," 2; "Pleadings," 10.
"Cleanse the Augean stable." *See* "Punishment," 6.
"Coach-and-four." *See* "Statutes," 26.
"*Commodum ex injuriâ suâ nemo,*" &c. *See* "Tort," 17, *n.*
"*Communis error facit jus.*" *See* "Law," 28.
"*Communis opinio.*" *See* "Law," 28.
"*Concencus, non concubitis, facit matrimonium.*" *See* "Matrimony," 6, *n.*
"Conscience, good faith, and reasonable diligence." *See* "Equity," 33.
"*Consensus tollit errorem.*" *See* "Consent," 4, *n.*
"*Consuetudo mercatorum.*" *See* "Commerce," 22.
"Contain the jurisdiction of your Court within the ancient mere-stones," &c. *See* "Judges," 26, *n.*
"*Contemporia expositio legis est optima.*" *See* "Law," 8.
"*Coram domino rege venit,*" &c. *See* "Sovereignty," 9.
"*Corpus delicti.*" *See* "Criminal Justice," 3, 9.
"Corruption shall say, I am thy father," &c. *See* "Judges," 76.
"*Corruptissima respublica, plurimæ leges.*" *See* "Parliament," 3, *n.*
"Courts of justice have nothing to do with political discussions." *See* "Politics," 2.
"Credit is to be taken to the later decisions." *See* "Judicial Decisions," 6, *n.*
"Cruelty may lead up, &c., to wife's adultery." *See* "Husband and Wife," 8.
"*Cuilibet in arte suâ perito est credendum.*" *See* "Foreign Law," 2, *n.*
"*Cursus Curiæ est lex Curiæ.*" *See* "Practice," 2, *n.*
"Custom and agreement," &c. *See* "Usage," 12, *n.*
"*Debet esse finis litium.*" *See* "Litigation," 2, *n.*
"Decisions and the reasons of them," &c. *See* "Judges," 48, *n.*
"Deeds not words." *See* "Words," 7, *n.*
"*De minimis non curat lex.*" *See* "Statutes," 27.
"*De non apparentibus, et non existentibus,*" &c. *See* "Law," 64, *n.*
"*De vita hominis nulla est,*" &c. *See* "Trial for Life," 1, *n.*
"*Difficilius est invenire quam vincere,*" &c. *See* "Will," 12.
"*Discretio est discernere per legem quid sit justum. See* "Discretion," 3, *n.*
"*Discretio est scire per legem,*" &c. *See* "Discretion," 8, *n.*
"Discretion." *See* "Discretion," 1, 10.
"D——n it, my lord," &c. *See* "Courts," 3, *n.*
"Do as you like." *See* "Discretion," 10.
"*Dormiunt aliquando leges, nunquam moriuntur.*" *See* "Law," 73, *n.*
"*Dotem regni.*" *See* "Navy," 2, *n.*
"*Dulcia defecta modulatur carmina lingua,*" &c. *See* "Husband and Wife," 12.

WORDS—*continued.*

"Each is bound to decide by and deliver that opinion," &c. *See* "Judges," 55.

"*Ecclesia est domus mansionalis Omnipotenti Dei.*" *See* "Ecclesiastical," 2, *n.*

"*Ecclesia non moritur.*" *See* "Christianity," 2, *n.*

"*E duobus malis, minimum eligendum.*" *See* "Evil," 1, *n.*

"*Ego hoc animo semper fui,*" &c. *See* "Judges," 26.

"*Ei nihil turpe,*" &c. *See* "Miscellaneous," 47, *n.*

"Englishmen have no greater enemies," &c. *See* "Ecclesiastical," 3, *n.*

"*Eos qui otium perturbant reddam otiosos.*" *See* "Judges," 26, *n.*

"Equality is equity." *See* "Equity," 8, *n.*

"Equity acts *in personam.*" *See* "Equity," 29, *n.*

"Equity is a roguish thing," &c. *See* "Equity," 3, *n.*, 19, *n.*

"Errors are like felons and traytors," &c. *See* "Judges," 18, *n.*

"*Est aliquod prodire tenus,*" &c. *See* "Punishment," 6.

"*Et domus sua cuique,*" &c. *See* "Trespass," 1, *n.*

"*Et quod sub lege esse debeat,*" &c. *See* "Sovereignty," 2, *n.*

"*Et sup' totam materiam petunt discretionem justiciariorum.*" *See* "Discretion," 3, *n.*

"Every benevolent purpose is not charitable." *See* "Charity," 1, *n.*

"Every man has a right to keep his own sentiments." *See* "Motives," 9.

"Every man that is injured," &c. *See* "Tort," 15.

"Every moral man is as much bound to obey the civil law," &c. *See* "Fraud," 20, *n.*

"Every one disguising the truth," &c. *See* "Truth," 8.

"Every one who is skilled in his own art," &c. *See* "Foreign Law," 4, *n.*

"Every will stands on its own bottom." *See* "Will," 12.

"*Exceptio probat regulam.*" *See* "Evidence," 17.

"*Ex dolo malo non oritur actio.*" *See* "Public Policy," 7; "Tort," 13, *n.*, 17.

"*Ex facie.*" *See* "Contempt of Court," 9.

"*Ex hypothesi.*" *See* "Criminal Justice," 34.

"*Expedit reipublicæ ut sit finis litium.*" *See* "Litigation," 2, *n.*

"Extreme care does no mischief." *See* "Judges," 16, *n.*

"Eye of the Court." *See* "Fraud," 17."

"Eye of the law." *See* "Contract," 4; "Husband and Wife," 1; "Liberty of the Subject," 4.

"*Facimus fatetur qui judicium fugit.*" *See* "Criminal Justice," 40.

"*Fama, quæ suspicionem inducit,*" &c. *See* "Judicial Proceedings," 11, *n.*

"Fast and loose." *See* "Settlements," 1.

"Fear God, honour the King." *See* "Judges," 26, *n.*; "Miscellaneous," 20.

"*Festinatio justitiæ est noverca infortunii.*" *See* "Judges," 16, *n.*

"*Fiat justitia ruat cælum.*" *See* "Politics," 4; "Public Servant," 5.

"Fiction is never admitted," &c. *See* "Truth," 10.

"*Firmiter inhibemus ne cinquam pro aliquâ,*" &c. *See* "Matrimony," 4.

WORDS—*continued.*
"For a man's house is his castle," &c. *See* "Trespass," 1, *n.*
"For as you sow," &c. *See* "Miscellaneous," 41, *n.*
"For those things which were done either by our fathers," &c. *See* "Miscellaneous," 2, *n.*
"Fortified by the law." *See* "Trespass," 3.
"Fraud in point of law." *See* "Fraud," 1.
"*Fraus est celare fraudem.*" *See* "Fraud," 25, *n.*
"From the cradle to the grave." *See* "Commerce," 6.
"*Furiosus absentis loco est,*" &c. *See* "Punishment," 2, *n.*
"*Furiosus solo furore punitur.*" *See* "Punishment," 2, *n.*
"Fustum funnidos tantaraboo." *See* "Will," 18, *n.*
"Give your judgments, but give no reasons." *See* "Judges," 45.
"God forbid." *See* "Criminal Justice," 7; "Jurisdiction," 1; "Jury," 25, *n.*; "Politics," 4; "Title," 2; "Truth," 9.
"God hath made man *Paulo inferiorem Angelis.*" *See* "Clergy," 1.
"God Himself is not an absolute monarch." *See* "Sovereignty," 2, n.
"Good matter must be pleaded in good form," &c. *See* "Pleadings," 1, *n.*
"Gravely to doubt is to affirm." *See* "Appeals," 2.
"Great is truth," &c. *See* "Truth," 4, *n.*
"*Habeant Curiæ Prætoriæ potestatem tam subveniendi,*" &c. *See* "Equity," 31, *n.*
"Had his zeal been half so much for truth," &c. *See* "Truth," 7.
"Happy is he, that by other men's harms take heed." *See* "Miscellaneous," 20.
"Hard cases make bad law." *See* "Law," 42.
"Hasty justice is the mother of misfortune." *See* "Judges," 16, *n.*
"He acts prudently, who obeys," &c. *See* "Law," 69, *n.*
"He is not deceived who knows himself to be deceived." *See* "Fraud," 4, *n.*
"He is not to be heard," &c. *See* "Counsel," 23, *n.*
"He revealeth the deep and secret things," &c. *See* "Motives," 2, *n.*
"He says one thing, but he does another," &c. *See* "Words," 7.
"He that filches from me my good name," &c. *See* "Libel," 6, *n.*
"He that has an ill name is half-hanged." *See* "Criminal Justice," 49.
"He that is greatest among you," &c. *See* "Miscellaneous," 14.
"He that kyllyth a man drunk, sobur," &c. *See* "Intoxication," 2, *n.*
"He that seemeth to be religious," &c. *See* "Religion," 2.
"He which soweth sparingly," &c. *See* "Miscellaneous," 41, *n.*
"He who asks equity must do equity." *See* "Courts," 1.
"He who flees judgment confesses his guilt." *See* "Criminal Justice," 40, *n.*
"He whose dirt it is," &c. *See* "Tort," 18.
"He who sows ought to reap." *See* "Miscellaneous," 41.
"He who will have advantage of precedents," &c. *See* "Precedents," 4.
"His pound of flesh." *See* "Discovery," 4, *n.*; "Precedents," 6, *n.*
"*Hoc non potest agere,*" &c. *See* "Sovereignty," 2, *n.*
"*Homo potest esse habilis et inhabilis diversis temporibus.*" *See* "Intoxication," 2, *n.*

WORDS—*continued.*
"Honour the King and respect the people." *See* "Judges," 26.
"Hot and cold were in one body fixt," &c. *See* "Counsel," 23, *n.*
"Hot in political excitement." *See* "Politics," 7.
"How happy could I be with either," &c. *See* "Miscellaneous," 60.
"Human nature is imperfect." *See* "Miscellaneous," 53.
"*Humanum est errare.*" *See* "Discretion," 7. *See also* "Sovereignty," 10.
"Hungry after jurisdiction." *See* "Jurisdiction," 6.
"I am by no means sure that if a man kept a tiger," &c. *See* "Tort," 11.
"I am entitled to sit in the testator's chair," &c. *See* "Will," 2, *n.*
"I beseech you, wrest once the law to your authority," &c. *See* "Precedents," 6, *n.*
"Ideas are free." *See* "Author," 1.
"If a man will make purchase of a chanoe," &c. *See* "Property," 12.
"If people are drunk or delirious," &c. *See* "Matrimony," 7, *n.*
"*Ignis fatuus.*" *See* "Law Reports," 3, *n.*
"*Ignorantia juris non excusat.*" *See* "Law," 14.
"I had rather hear things at a venture," &c. *See* "Trial for Life," 2.
"I know not when an usage," &c. *See* "Usage," 11.
"I like that ancient Saxon phrase," &c. *See* "Charity," 2, *n.*
"I'll be d——d to h——l if I sit here," &c. *See* "Courts," 3, *n.*
"Illegal." *See* "Fraud," 24.
"Illegality." *See* "Fraud," 24.
"I may use mine own as I will." *See* "Property," 13.
"I might as well say to you, 'U.B.D.'" *See* "Courts," 3, *n.*
"*Imprimatur.*" *See* "Liberty of the Press," 7.
"*In amore hace omnia sunt vitia, injuriæ,*" &c. *See* "Miscellaneous," 26.
"In as much as you did feed, clothe, lodge the poor," &c. *See* "Poor," 1.
"*In camerâ.*" *See* "Judicial Proceedings," 7.
"*In esse.*" *See* "Property," 1.
"*In fæce Romuli quam in politia Angliæ.*" *See* "Judges," 76.
"*In fictione juris semper æquitas existit.*" *See* "Fiction," 2, *n.*
"*In futuro.*" *See* "Property," 3.
"*Iniquum est aliquem rei suæ esse judicem,*" &c. *See* "Administration of Justice," 23, *n.*
"*Injuria sine damno.*" *See* "Tort," 10, *n.*
"Innocent." *See* "Criminal Justice," 21.
"*In perpetuam rei memoriam.*" *See* "Judicial Decisions," 18.
"*In pœnam.*" *See* "Criminal Justice," 37.
"In the place where the tree falleth," &c. *See* "Miscellaneous," 45, *n.*
"Intolerable yoke upon any one's neck." *See* "Judges," 69.
"*Ipse autem rex non debet esse,*" &c. *See* "Sovereignty," 2, *n.*
"*Ipso facto.*" *See* "Naturalization."
"I shall temper so justice with mercy." *See* "Punishment," 5, *n.*
"It is always difficult, &c., for a man to decide between," &c. *See* "Administration of Justice," 30.
"It is a vain thing to imagine a right," &c. *See* "Tort," 20.

WORDS—*continued.*
"It is better for the subject that faulty subjects," &c. *See* "Precedents," 20.
"It is better that an individual should occasionally suffer a wrong," &c. *See* "Administration of Justice," 35.
"It is every man's own fault if he does not take such advice," &c. *See* "Miscellaneous," 33.
"It is impossible to dive into the secret recesses," &c. *See* "Motives," 5.
"It is not madness that I have uttered," &c. *See* "Insanity," 1.
"It is the duty of the wife to submit to her husband." *See* "Husband and Wife," 6.
"It were infinite for the law to judge the causes of causes," &c. *See* "Motives," 13.
"I will attain supreme eminence, or perish in the attempt." *See* "Miscellaneous," 61, *n.*
"I would have the chastity of my wife," &c. *See* "Judges," 2, *n.*
"I yield to authority." *See* "Practice," 5.
"Jack in a Box." *See* "Words," 5.
"*Jam tua res agitur paries cum proximus ardet.*" *See* "Judicial Proceedings," 2, *n.*
"*Judex non potest esse testis in propriâ causâ.* *See* "Administration of Justice," 23, *n.*
"*Judex non potest injuriam sibi datam punire.*" *See* "Administration of Justice," 23, *n.*
"Judges are not bound to explain the reason of their sentence." *See* "Judges," 45, *n.*
"Judges do not answer questions of fact," &c. *See* "Jury," 2, *n.*
"Judges must move steadily upon their right poles." *See* "Judges," 71.
"*Judices non tenentur exprimere causam sententiæ suæ.*" *See* "Judges," 45, *n.*
"*Judicia posteriora sunt in lege fortiora.*" *See* "Judicial Decisions," 6, *n.*
"*Judiciis posterioribus fides est adhibenda.*" *See* "Judicial Decisions," 6, *n.*
"*Judicis est jus dicere non dare.*" *See* "Judges," 28, *n.*
"*Jure naturæ æquum est, neminem cum alterius,*" &c. *See* "Author," 2, *n.*
"*Jurisdictionem.*" *See* "Administration of Justice," 1, *n.*
"Justice and common sense," &c. *See* "Criminal Justice," 30, *n.*
"Justice the mother of security." *See* "Judicial Proceedings," 6, *n.*
"Justice truly preventing," &c. *See* "Punishment," 3, *n.*
"*La ley est un egal dispenser de Justice,*" &c. *See* "Tort," 6.
"Law is best applied, when subservient to the honesty of the case." *See* "Law," 26.
"Laws come to the assistance of the vigilant," &c. *See* "Diligence," 2, *n.*
"Laws of nature are God's thoughts," &c. *See* "Law," 68, *n.*
"Laying the axe to the root of the tree." *See* "Miscellaneous," 52.
"Leaping before one come to the stile." *See* "Miscellaneous," 16, 17.

WORDS—*continued.*
"Leave the case where it is." *See* "Title," 1.
"*Leges et constitutiones futuris certum est dare*," &c. *See* "Law," 60.
"*Leges in bonum et salutem hominum*," &c. *See* "Miscellaneous," 42, *n.*
"*Leges posteriores priores, contrarias abrogant.*" *See* "Law," 2, *n.*
"*Le roi est mort*," &c. *See* "Sovereignty," 4, *n.*
"Let a madman be punished," &c. *See* "Punishment," 2, *n.*
"Let him who sins when drunk," &c. *See* "Intoxication," 2.
"Let infliction of punishment increase," &c. *See* "Punishment," 3, *n.*
"Let kings be as David was," &c. *See* "Sovereignty," 1.
"Let me have no lying," &c. *See* "Commerce," 4, *n.*
"Let no cobler go beyond his last." *See* "Miscellaneous," 46.
"Let the cobler stick to his last." *See* "Miscellaneous," 46, *n.*
"Let us do evil," &c. *See* "Evil," 2, *n.*
"Let us pursue the plot a God's name." *See* "Judges," 73.
"*Lex æterna.*" *See* "Law."
"*Lex aliquando sequitur æquitatem.*" *See* "Equity," 2, *n.*
"*Lex Angliæ est lex misericordiæ.*" *See* "Law," 48, *n.*
"*Lex dilationes semper exhorret.*" *See* "Delay," 2, *n.*
"*Lex est sanctio jubens*," &c. *See* "Law," 17, *n.*
"*Lex est summa ratio.*" *See* "Law," 17, *n.*
"*Lex loci.*" *See* "Usage," 12.
"*Lex mercatoria.*" *See* "Commerce," 22.
"*Lex Parliamenti.*" *See* "Parliament," 4.
"*Lex prospicit non respicit.*" *See* "Law," 60, *n.*
"*Lex reprobat moram.*" *See* "Delay," 2, *n.*
"*Lex vult potius privatum incommodum quam publicum*," &c. *See* "Justice," 2, *n.*
"Look before you leap." *See* "Miscellaneous," 17, *n.*
"Lord Chief Justice." *See* "Judges," 14.
"*Magna est veritas, et prevalebit.*" *See* "Truth," 4.
"*Malum in se.*" *See* "Fraud," 20.
"*Malum prohibitum.*" *See* "Fraud," 20.
"Many know many things, no one everything." *See* "Miscellaneous," 2, *n.*
"Masterly inactivity may be prudence," &c. *See* "Miscellaneous," 35.
"May one be pardoned and retain the offence." *See* "Pardon," 1, *n.*
"Meddle not with them that are given to change." *See* "Miscellaneous," 20.
"*Melior est justitia verè præveniens*," &c. *See* "Punishment," 3, *n.*
"Men should not sin in their graves." *See* "Will," 13.
"*Mendax infamia.*" *See* "Judges," 82, *n.*
"Men intoxicated are sometimes," &c. *See* "Intoxication," 1.
"Men's feelings are as different as their faces." *See* "Motives," 10.
"Mercy seasons justice." *See* "Punishment," 5, *n.*
"*Meum* and *tuum.*" *See* "Judges," 9.
"*Miniatur innocentibus qui parcit nocentibus*," &c. *See* "Criminal Justice," 30, *n.*

WORDS—*continued.*
"Ministers were the better for being, &c., peppered," &c. *See* "Politics," 1.
"*Modus et conventio vincunt legem.*" *See* "Usage," 12, *n.*
"*Modus in rebus.*" *See* "Miscellaneous," 13.
"Money paid." *See* "Fraud," 20.
"Mr." *See* "Esquire," 3, *n.*
"*Multi multa, nemo omnia novit.*" *See* "Miscellaneous," 2, *n.*
"*Multiplicata transgressione crescat,*" &c. *See* "Punishment," 3, *n.*
"*Multitudinem decem faciunt.*" *See* "Evidence," 30, *n.*
"My duty, sir, to find out his meaning?" *See* "Will," 18, *n.*
"*Nam genus et proavos, et quæ non fecimus,*" &c. *See* "Miscellaneous," 2, *n.*
"*Necessitas est lex temporis et loci.*" *See* "Necessity," 1, *n.*
"*Necessitas non habet legem.*" *See* "Necessity," 1, *n.*
"Necessity creates the law," &c. *See* "Necessity," 2.
"Necessity is a powerful master in teaching the duties," &c. *See* "Husband and Wife," 11.
"Necessity is the law of the time and action," &c. *See* "Necessity," 1, *n.*
"Necessity justifies that which it compels." *See* "Jury," 30.
"Necessity, the tyrant's plea." *See* "Necessity," 1, *n.*
"Neither." *See* "Miscellaneous," 60.
"*Neminem portet esse sapientiorem legibus.*" *See* "Law," 17, *n.*
"*Nemo debet esse judex in propriâ suâ causa.*" *See* "Administration of Justice," 23, *n.*
"*Nemo nascitur artifex.*" *See* "Law," 17, *n.*
"Never mention Hell to ears polite." *See* "Courts," 3, *n.*
"*Nihil facit error nominis cum de corpore constat.*" *See* "Name," *n.*
"*Nihil inde expectantes.*" *See* "Judges," 26, *n.*
"Nine points of the law." *See* "Possession," 2.
"*Nobiles magis plectuntur pecuniâ,*" &c. *See* "Damages," 2, *n.*
"No dog is entitled to have one worry," &c. *See* "Miscellaneous," 51.
"No man is to be condemned unheard." *See* "Criminal Justice," 13.
"No man ought to be so absurd," &c. *See* "Title," 4.
"No man out of his own private reason," &c. *See* "Law," 17, *n.*
"No man should, &c., have an interest against his duty." *See* "Administration of Justice," 31.
"Nominal damages." *See* "Damages," 6.
"*Non decipitur qui scit se decipi.*" *See* "Fraud," 4, *n.*
"None shall take advantage," &c. *See* "Tort," 17.
"*Non numerentur sed ponderentur.*" *See* "Evidence," 29.
"*Non prosequitur.*" *See* "Nonsuit," *n.*
"No polluted hand shall touch the pure fountains of justice." *See* "Fraud," 32.
"*Non sum doctus rere instructus.*" *See* "Jury," 25.
"Nothing is law that is not reason." *See* "Judges," 50.
"Nothing is so easy as to be wise after the event." *See* "Miscellaneous," 15; "Railway Company," 1.
"Nothing is so silly as cunning." *See* "Miscellaneous," 19.
"Nothing shall be presumed one way or the other," &c. *See* "Magistrates," 4.

WORDS—*continued.*
"*Nova constitutio futuris formam imponere*," &c. *See* "Law," 60, *n.*
"*Nulla vetita aut turpia præsumuntur*," &c. *See* "Law," 17, *n.*
"*Nullum simile quatuor pedibus currit.*" *See* "Miscellaneous," 32, *n.*
"*Nul prendra advantage*," &c. *See* "Tort," 17, *n.*
"Nursing father." *See* "Statutes," 23.
"Nutshell, point lies in a." *See* "Miscellaneous," 23, *n.*
"*Obedientia est legis essentia.*" *See* "Law," 69, *n.*
"*Obiter dicta*, like the proverbial chickens of destiny," &c. *See* "Administration of Justice," 8.
"Observe reader your old books," &c. *See* "Books," 2.
"Of two evils, I have chosen the least." *See* "Evil," 1, *n.*
"Of two evils, choose the least." *See* "Evil," 1.
"Of two evils, the less is always to be chosen." *See* "Evil," 1, *n.*
"*Omnis innovatio plus novitate perturbat*," &c. *See* "Cases," 9, *n.*
"One of the corner stones of the law." *See* "Law," 23.
"One of the land marks." *See* "Law," 23.
"*Ostiis apertis.*" *See* "Judicial Proceedings," 7.
"O Time, thou must untangle this," &c. *See* "Miscellaneous," 22, *n.*
"Out of thine own mouth will I judge thee." *See* "Criminal Justice," 11, *n.*
"*Par Dieu.*" *See* "Liberty of the Subject," 5, *n.*
"Parties should not sleep on their rights." *See* "Equity," 15.
"*Pœnæ potius nolliendæ quam*," &c. *See* "Punishment," 3, *n.*
"People must not be wiser," &c. *See* "Miscellaneous," 6.
"Persecution is a very easy form of virtue." *See* "Virtue," 2.
"Personal property has no locality." *See* "Property," 8.
"*Piépoudre.*" *See* "Judicial Decisions," 8.
"Plain truth, dear Murray," &c. *See* "Truth," 6, *n.*
"Polar star." *See* "Will," 17.
"Popularity which follows; not that which is run after." *See* "Judges," 26.
"Pound of flesh." *See* "Discovery," 4, *n.*; "Precedents," 6, *n.*
"Power should follow justice, not precede it." *See* "Pardon," 1, *n.*
"Pray let us so resolve cases," &c. *See* "Cases," 10.
"*Præstat cautela quam*," &c." *See* "Punishment," 3, *n.*
"Precedent goes in support of justice." *See* "Precedents," 19.
"Prevent men hanging out false colours." *See* "Miscellaneous," 48.
"Prevention is better," &c. *See* "Punishment," 3, *n.*
"*Primâ facie.*" *See* "Presumption," 10.
"*Primum mobile.*" *See* "Judges," 76.
"*Principium urbis et quasi seminarium reipublicæ.*" *See* "Matrimony," 6, *n.*
"*Privatum incommodum publico bono pensatur.*" *See* "Navy," 7, *n.*
"*Pro salute animarum.*" *See* "Punishment," 7.
"*Pro salute reipublicæ.*" *See* "Punishment," 6.
"*Prudenter agit qui præcepto legis obtemperat.*" *See* "Law," 69, *n.*
"Publicity is the very soul of justice." *See* "Judicial Proceedings," 6.
"Public policy is a very unruly horse," &c. *See* "Public Policy," 2.
"Punishment should rather be softened," &c. *See* "Punishment," 3, *n.*
"*Quæ ad unum finem loquuta sunt*," &c. *See* "Words," 4, *n.*

WORDS—*continued.*

"*Quæ mala sunt inchoata*," &c. *See* "Miscellaneous," 47, *n.*
"*Quæritur, ut crescunt tot magna volumina legis?*" *See* "Parliament," 3.
"*Qui consulta patrum, qui leges juraque servat.*" *See* "Equity," 31.
"Quicksands in the law," &c. *See* "Law," 43.
"*Quicquid necessitas cogit, defendit.*" *See* "Necessity," 1, *n.*
"*Qui peccat ebrius, luat sobrius.*" *See* "Intoxication," 2.
"*Qui s'excuse s'accuse.*" *See* "Miscellaneous," 29.
"*Quod datum est ecclesiæ, datum est Deo.*" *See* "Charity," 2, *n.*
"*Quos Deus vult perdere prius dementat.*" *See* "Miscellaneous," 58.
"*Quoties in verbis nulla est ambiguitas*," &c. *See* "Construction," 3, *n.*
"Rather commend yourself by your actions," &c. *See* "Words," 3.
"*Ratio decidendi.*" *See* "Parliament," 19.
"*Ratio est anima legis.*" *See* "Law," 17, *n.*
"Reading, maketh a full man, conference a ready man," &c. *See* "Law," 1, *n.*
"Reasonable human conduct," &c. *See* "Reasonable," 3.
"Render justice to the public," &c. *See* "Punishment," 5.
"Report which induces suspicion," &c. *See* "Judicial Proceedings," 11, *n.*
"Reputation is a most idle and false imposition," &c. *See* "Reputation," *n.*
"*Res profecto stulta est nequitiæ modus.*" *See* "Miscellaneous," 47, *n.*
"*Rex nunquam moritur.*" *See* "Sovereignty," 4, *n.*
"*Rex potest facere quod de jure*," &c. *See* "Sovereignty," 2, *n.*
"*Roy n'est lie per ascun Statute*," &c. *See* "Costs," 4, *n.*
"Rule which will tie the hands of the Court." *See* "Judges," 68.
"*Sæpe viatorem nova, non vetus, orbita fallit.*" *See* "Miscellaneous," 27, *n.*
"*Salus populi suprema lex.*" *See* "Navy," 7, *n.*
"*Salus reipublicæ suprema lex.*" *See* "Common Law," 12.
"*Salva reverentia.*" *See* "Coke," 3.
"Saxon phrase." *See* "Charity," 2, *n.*
"*Secundem discretionem boni viri.*" *See* "Equity," 31.
"Seldom will it happen that any rule," &c. *See* "Precedents," 13, *n.*
"*Semper presumitur pro negante.*" *See* "Parliament," 19.
"*Sequi debet potentia justitiam non præcedere.*" *See* "Pardon," 1, *n.*
"*Sic utere tuo ut alienum*," &c. *See* "Tort," 4.
"*Similem habemum Demosthenis*," &c. *See* "Trespass," 3.
"Sir." *See* "Esquire," 3, *n.*
"*Stare decisis.*" *See* "Cases," 19.
"Stick to your good law, and leave off your bad Latin." *See* "Miscellaneous," 13, *n.*
"Stile, leaping before one come to the." *See* "Miscellaneous," 17.
"*Strictissimi juris.*" *See* "Criminal Justice," 37.
"Strict law and justice hand-in-hand together." *See* "Law," 50.
"*Sub sigillo confessionis.*" *See* "Solicitor and Client," 1.
"Sure as I hope before my Judge to live," &c. *See* "Husband and Wife," 10.
"*Talis discretio discretionem conundit.*" *See* "Discretion," 8.
"Take the thing in the grip of our hands." *See* "Miscellaneous," 23.

WORDS—*continued.*
"Ten constitute a crowd." *See* "Evidence," 30, *n.*
"*Testis oculatus unus plus valet quam auriti decem.*" *See* "Evidence," 31, *n.*
"Thank God." *See* "Politics," 6; "Religion," 3.
"That whom he could not by the sword destroy," &c. *See* "Law," 7.
"The admitted power to award a particular punishment," &c. *See* "Punishment," 8.
"The advantage to the community," &c. *See* "Tort," 24.
"The best character is generally that which," &c. *See* "Character," 6.
"The best men are but men," &c. *See* "Miscellaneous," 54.
"The better day the better deed." *See* "Day."
"The blaze of a reputation," &c. *See* "Reputation."
"The children of the world are in their generation," &c. *See* "Miscellaneous," 2, *n.*
"The church is the mansion-house of the Omnipotent God." *See* "Ecclesiastical," 1, *n.*
"The common law is but the common usage," &c. *See* "Precedents," 10.
"The course of the Court is the law of the Court." *See* "Practice," 2, 11.
"The end directs and sanctifies the means." *See* "Miscellaneous," 56.
"The end justifies the means." *See* "Miscellaneous," 56.
"The end may not always sanctify the means." *See* "Criminal Justice," 43.
"The equality of mercy," &c. *See* "Punishment," 5, *n.*
"The execution of an offender," &c. *See* "Punishment," 2, *n.*
"The eye of the law." *See* "Contract," 4; "Fraud," 17; "Husband and Wife," 1; "Liberty of the Subject," 4.
"The farthest way about," &c. *See* "Miscellaneous," 27.
"The father of equity." *See* "Equity," 30, *n.*
"The four bars." *See* "Counsel," 1, *n.*
"The higher classes are more punished in money," &c. *See* "Damages," 2, *n.*
"The house of every one is to him as his castle," &c. *See* "Trespass," 1.
"The hungry Judges soon the sentence sign," &c. *See* "Jury," 29, *n.*
"The interests of truth and justice," &c. *See* "Truth," 4.
"The King can do no wrong," &c. *See* "Sovereignty," 2.
"The King is not bound by any statute," &c. *See* "Costs," 4, *n.*
"The King never dies." *See* "Sovereignty," 4, 6.
"The King sues by," &c. *See* "Sovereignty," 9.
"The later decisions are the stronger in law." *See* "Judicial Decisions," 6, *n.*
"The law dislikes delay." *See* "Delay," 2, *n.*
"The law is but the handmaid of justice and inflexibility." *See* "Law," 54.
"The law is so benignant," &c. *See* "Property," 6.
"The law is well known and is the same for all ranks." *See* "Justice," 3, *n.*
"The law knows no favourites." *See* "Law," 19.
"The law looks forward, not backward." *See* "Law," 60, *n.*

WORDS—*continued.*

"The law was the golden mete-wand and measure," &c. *See* "Sovereignty," 14.

"The laws sometimes sleep, never die." *See* "Law," 73, *n.*

"The man who laugh'd but once to see an ass," &c. *See* "Jury," 3, *n.*

"The most learned doubteth most." *See* "Cases," 14, *n.*

"The next way home's," &c. *See* "Miscellaneous," 27, *n.*

"The oak scorns to grow except on free land." *See* "Land," *n.*

"The opinions of philosophers, physicians," &c. *See* "Foreign Law," 4, *n.*

"The orthodox Judge." *See* "Judges," 20, *n.*

"The paternal jurisdiction of Courts of equity." *See* "Equity," 30.

"The point lies in a nutshell." *See* "Miscellaneous," 23, *n.*

"The power to regulate the disposal of property," &c. *See* "Property," 2.

"The practice of the Court is the law of the Court." *See* "New Trial," 3; "Practice," 2.

"The private must suffer for the public cause." *See* "Judicial Proceedings," 2, *n.*

"The reason and fairness of one man is manifestly no rule," &c. *See* "Reasonable," 4.

"The reason why money cannot be followed," &c. *See* "Money," 4.

"The royal navy of England has ever been," &c. *See* "Navy," 3.

"The sooner a bad precedent is gotten rid of," &c. *See* "Precedents," 15.

"The sparks of all the sciences in the world are raked up," &c. *See* "Law," 20, *n.*

"The statute is like a tyrant," &c. *See* "Statutes," 23.

"The tree must lie," &c. *See* "Miscellaneous," 45.

"There are cases when the simple truth is difficult," &c. *See* "Truth," 13, *n.*

"There is no entering into the secret thoughts of a man's heart." *See* "Motives," 4.

"There is no mean in wickedness," &c. *See* "Miscellaneous," 47, *n.*

"There is no more difference between a grant," &c. *See* "Title," 3.

"There must be an end of things." *See* "Miscellaneous," 13.

"*Thesauri absconditi.*" *See* "Judicial Decisions," 1.

"*Thesauri aperti.*" *See* "Judicial Decisions," 1.

"These are my sentiments." *See* "New Trial," 1, *n.*

"They moved heaven and earth." *See* "Punishment," 9.

"They that once begin first to trouble the water," &c. *See* "Miscellaneous," 50.

"Things bad in principle," &c. *See* "Miscellaneous," 47, *n.*

"Things which do not appear," &c. *See* "Law," 64, *n.*

"Thou shalt not feethe a kid in his mother's milk." *See* "Miscellaneous," 42.

"Time whereof the memory of man," &c. *See* "Usage," 6, *n.*

"Times wherein things were obscure." *See* "Usage," 7.

"To be tried by God and your Country." *See* "Criminal Justice," 48, *n.*

"To do justice." *See* "Practice," 26.

"To say that whenever the world grows wiser," &c. *See* "Tort," 12.

"To whom nothing is sufficient," &c. *See* "Miscellaneous," 47, *n.*

WORDS—*continued.*
"Touch not a cat," &c. *See* "Miscellaneous," 39.
"*Tout exemple cloche.*" *See* "Miscellaneous," 32.
"Truth fears nothing but concealment." *See* "Truth," 12, *n.*
"Truth is the thing that we are enquiring after," &c. *See* "Truth," 5.
"Truth, like all other good things," &c. *See* "Truth," 12.
"U. B. D." *See* "Courts," 3, *n.*
"*Ubi jus ibi remedium.*" *See* "Tort," 15, *n.*; "Trespass," 2, *n.*
"Upon your honour, sir! pray speak by your honesty." *See* "Administration of Justice," 17.
"*Ut pœna ad paucos,*" &c. *See* "Punishment," 2, *n.*
"*Veritas nihil veritur nisi abscondi.*" *See* "Truth," 12, *n.*
"*Vigilantibus et non dormientibus succurunt jura.*" *See* "Diligence," 1.
"*Vigilantibus non dormientibus jura subveniunt.*" *See* "Diligence," 2, *n.*
"Violent courses are like to hot waters," &c. *See* "Punishment," 10, *n.*
"*Vir acer et vehemens.*" *See* "Coke," 4.
"*Vir bonus est quis,*" &c. *See* "Equity," 31.
"*Vita reipublicæ pax, et animus libertas et libertatis,*" &c. *See* "Damages," 2, *n.*
"*Vitium clerici nocere non debet.*" *See* "Amendments," 7, *n.*
"Want of right and want of remedy are reciprocal." *See* "Tort," 20.
"War a great evil chosen to avoid a greater." *See* "Navy," 7.
"Way, &c., the farthest." *See* "Miscellaneous," 27.
"Weigh in golden scales." *See* "Politics," 7.
"We know that passion, &c., tempt many to deviate," &c. *See* "Truth," 13.
"We must judge of men's intentions by their acts," &c. *See* "Words," 8.
"What a man does in his closet," &c. *See* "Tort," 25.
"What is one man's gain is another's loss." *See* "Commerce," 9, 10.
"What passes in the mind of man," &c. *See* "Motives," 2.
"Whatsoever a man soweth," &c. *See* "Miscellaneous," 41, *n.*
"When thieves fall out," &c. *See* "Miscellaneous," 49.
"Where Irishmen are good, it is impossible to find better," &c. *See* "Ireland," 1.
"Wherever a man neglects to take any advantage," &c. *See* "Pleadings," 5.
"Whilom there was a dwellyng in my countré," &c. *See* "Ecclesiastical," 6, *n.*
"Who prov'd, as sure as God's in Gloucester," &c. *See* "Miscellaneous," 57.
"Whosoever ministers to the poor," &c. *See* "Poor," 1.
"Will of the legislature." *See* "Statutes," 24.
"Wise after the event." *See* "Miscellaneous," 15.
"Witnesses may lie, either be mistaken," &c. *See* "Witness," 1.
"Words are women, deeds are men." *See* "Words," 7, *n.*
"Would to God you were innocent." *See* "Criminal Justice," 20.
"Would yee both eat your cake and have your cake?" *See* "Miscellaneous," 59, *n.*
"You are a gentleman of the long robe," &c. *See* "Counsel," 1, *n.*
"You may not sell the cow," &c. *See* "Miscellaneous," 59.

WORDS—*continued.*
"You must not when you have the choice," &c. *See* "Tort," 4.
"You shall not do evil that good may come." *See* "Evil," 2, 3.
"You shall not turn what was designed," &c. *See* "Miscellaneous," 42, *n.*
"Zeal and indignation," &c. *See* "Miscellaneous," 34.

actions for. *See* "Trial for Life," 1, *n.*
catching at. *See* "Judges," 12.
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YOKE. *See* "Judges," 69.

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